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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro

Summary

In the present report, the Special Rapporteur outlines her vision of the mandate and the working methods she intends to use, drawing on the work and experience of her predecessors, in the hope of making progress in implementing the mandate entrusted to her by the Human Rights Council in its resolution 26/8.

In section II, the Special Rapporteur provides an account of her activities since her appointment. In section III, she briefly looks into the main trends and challenges of trafficking in persons, focusing on the link between trafficking in persons and economic trends; trafficking and mixed migration flows; trafficking and conflicts; the protection of children on the move; a gendered perspective of trafficking; and trafficking and social inclusion. In section IV, she defines the legal and policy frameworks of her mandate.

In section V, the Special Rapporteur sets out the agenda of her intended action, guided by the principles of (a) a human rights-based and victim-centred approach to promoting and protecting the human rights of victims of trafficking, especially women and children; (b) a gendered perspective to understand the characteristics of crimes of trafficking and adopt targeted measures; and (c) the best interests of the child in all actions concerning trafficked children. In particular, the Special Rapporteur's focus will be on prevention of all forms of trafficking as a social issue, especially in relation to labour exploitation; promotion and protection of the human rights of victims of trafficking and exploited persons as potential victims; engaging with the private sector and social partners with a view to complementing the criminal justice response with a meaningful social agenda to prevent and combat trafficking in persons.

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The Special Rapporteur will focus on prevention of and protection from all forms of trafficking in persons, in continuation of the broad interpretation of trafficking in persons adopted by the mandate. This would include developing understanding of new and emerging trends of trafficking, such as the consequences and impacts that conflicts and humanitarian crises may have on trafficking; and the link between mixed migration flows and trafficking, which she intends to explore further within existing human rights frameworks. The prevention of trafficking for the purpose of labour exploitation, including of vulnerable or marginalized groups such as migrants, children, minorities, asylum seekers and refugees, will be another aspect of the expert's focus.

Furthermore, the Special Rapporteur will adopt an inclusive and holistic approach to preventing and combating trafficking in persons which requires addressing the systemic/underlying social factors that create the vulnerabilities of victims and potential victims of trafficking. Building on the existing work of the mandate, in particular the basic principles on the right to an effective remedy for victims of trafficking in persons (A/HRC/26/18 and A/69/33797), she will look into remaining gaps in the conceptualization of that right and its operationalization at the national level. Moreover, the Special Rapporteur intends to analyse laws, policies and practices around the world and take stock of promising practices and lessons learned on the provision of unconditional assistance to victims and potential victims of trafficking, including children, who are frequently left without assistance or the necessary support to access remedies, including compensation. She expects to provide guidance to policymakers and practitioners on better implementing the right to assistance and support and maximizing outreach and impact, thereby contributing to more effective prevention and prosecution.

The Special Rapporteur is of the view that additional guidance would be necessary to better equip States for the actions required to comply with their obligations to exercise the principle of due diligence, and to ensure accountability for the rights of trafficked persons by preventing trafficking, investigating and prosecuting traffickers, assisting and protecting victims of trafficking and providing access to remedy.

The Special Rapporteur expects to engage with all stakeholders to address trafficking effectively by partnering and engaging with States and non-State actors. She will also consider civil society organizations as strategic partners — not only service providers — to be included in the process of designing and implementing targeted anti-trafficking measures.

Additionally, the Special Rapporteur will continue reaching out to the private sector, in particular engaging with businesses and employers, as well as trade unions, to look out for possibilities for public-private partnerships aimed at establishing effective actions to prevent and combat trafficking. Such actions, including State action plans or other regulations, will increase awareness of the risks that trafficking entails for businesses and employers, and encourage them to commit themselves to take action to eradicate trafficking, especially from their supply chains. To that end, the Special Rapporteur will bring together businesses in selected sectors to exchange experiences and practices with each other, review their assessment protocols through the lens of trafficking prevention, pilot the use of benchmarks and indicators and encourage multi-stakeholder initiatives, where they exist, to respect human rights and combat trafficking in persons, including the establishment of complaint mechanisms enabling vulnerable workers to report exploitation.

In the final section, the Special Rapporteur sets out the methodology she intends to adopt in carrying out her mandate, which includes the conduct of country visits and the production of country reports, the development of thematic expertise and checklists to shape international standards, the promotion of clarity around trafficking and fleshing out the substantive content of key trafficking issues. In order to respond effectively to reliable allegations of human rights violations and protect the rights of actual or potential victims of

trafficking, she will communicate cases to States, requesting clarification and action in accordance with the established procedure. Finally, the Special Rapporteur will strengthen the mandate's engagement with other United Nations human rights mechanisms, including relevant special procedures mandates, treaty bodies and the universal periodic review. She also intends to fight trafficking in cooperation with regional, subregional and national mechanisms, including national coordinating bodies, national rapporteurs or equivalent mechanisms, and national human rights institutions.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 26/8. It outlines the activities of the Special Rapporteur on trafficking in persons, especially women and children and contains a thematic analysis of the Special Rapporteur's vision of her mandate.

II. Activities carried out by the Special Rapporteur

A. Participation in conferences and consultations

2. On 8 October 2014 in Vienna, the Special Rapporteur was part of a panel on the theme of the United Nations Office on Drugs and Crime (UNODC) issue paper on the key concept of consent, held on the margins of the seventh session of the Conference of Parties to the United Nations Convention against International Organized Crime.

3. On 24 November 2014 in Vienna, she made a statement during the launch of the UNODC *Global Report on Trafficking in Persons 2014*.

4. On 10 and 11 December 2014 in Geneva, she took part in a panel discussion on addressing the drivers of irregular migration through a comprehensive approach, during the Office of the United Nations High Commissioner for Refugees (UNHCR) Dialogue on Protection Challenges: Protection at Sea.

5. On 13 March 2015 in Geneva, she addressed the twenty-eighth session of the annual meeting of the International Coordination Committee of National Human Rights Institutions for the protection of human rights.

B. Country visits

6. The Special Rapporteur visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. The report on the visit is contained in the addendum to the present report. She thanks the Government for its cooperation prior to and during the visit.

III. Emerging trends and challenges

A. Trafficking in persons and economic trends

7. Trafficking in persons, especially women and children, is a gross human rights violation. It is also a lucrative crime that generates US$150.2 billion per year in illegal profits.[1] The flow of trafficking in persons evolves with the changing socioeconomic realities of society and traffickers adapt their modus operandi accordingly.

8. In the age of globalization, trafficking in persons cannot be examined in isolation from the broader socioeconomic realities that drive it, nor should it be tackled only from a criminal perspective. Factors such as poverty and inequality, lack of educational opportunity and access to health care, gender discrimination, including gender-based

[1] International Labour Office, *Profits and Poverty: the Economics of Forced Labour* (2014), p. 13.

violence, racial inequality and migration are some of the underlying factors that cause/contribute to trafficking in persons.

9. No country or region is spared the crime of trafficking in persons, which can occur everywhere — at the national, subregional, regional, transcontinental and international levels. Recent trends reveal that victims tend to be trafficked from poor countries to more affluent ones within a region. Similarly, there is also a correlation between the affluence of a destination country (measured by its gross domestic product) and the share of victims trafficked there from other regions (transregional trafficking). Richer countries attract victims from a variety of origins and countries, whereas less affluent countries are mainly affected by domestic or subregional trafficking flows.[2]

10. Moreover, trafficking in persons has been identified as a problem across a variety of economic sectors, including those integrated into global markets. It has been reported that the economic sectors most exposed to trafficking in persons include agriculture and horticulture, construction, garments and textiles, hospitality and catering, mining, logging and forestry, fishing, food processing and packaging, transportation, domestic service and other care and cleaning work. In those cases, trafficking in persons may be carried out by businesses and/or their business partners, including suppliers, subcontractors, labour brokers or private recruitment agencies, often because of the motivation to derive economic benefits from exploitable labour or services provided by trafficked persons or because of unmonitored or unregulated supply chain practices (see A/67/261, paras. 8–12). It is worth mentioning that in such cases trafficking in persons can and does occur without the transfer of victims from one place to another. The focus should therefore be on the exploitation, rather than the way the person has reached the destination country.

B. Trafficking and mixed migration flows

11. Trafficking in persons, especially women and children, is a multifaceted issue that is often interlinked with so-called mixed migration flows, encompassing various categories of persons on the move, including refugees, asylum seekers, economic migrants and other migrants[3] travelling, mostly in an irregular manner, along similar routes, using similar means of travel, but for different reasons.[4] Trafficking victims do not necessarily immediately enter the mixed migration flow process as trafficked persons, but might become trafficked during their journey or when they reach a transit or destination country. Their migration might often have started out through smuggling, but then have turned into trafficking at a later stage. Initial consent to a migration project, be it regular or irregular, does not imply that a case has necessarily to be qualified as smuggling. Rather, when migrants are placed in abusive and exploitative situations during their journey or at their destination, and when their rights are drastically limited or completely denied, the case in question has to be qualified as trafficking in persons.

12. In fact trafficked persons, like other categories of persons in a migration process, are initially persons pushed into a search for a better life to flee a range of issues, such as poverty, armed conflict, humanitarian crises, torture or other human rights violations, including domestic violence and gender-related persecution. Social and economic vulnerabilities, linguistic isolation, irregular residence status and States' persistent failure to recognize and protect the human rights of vulnerable and/or undocumented migrants

[2] UNODC, *Global Report on Trafficking in Persons 2014*, p. 7.

[3] International Organization for Migration, *International Migration Law: Glossary on Migration* (Geneva, 2004), p. 42.

[4] See www.unhcr.org/4ec1436c9.pdf.

contribute to exploitative activities that occur as a result of trafficking in places of origin, transit and destination (A/HRC/26/37/Add.2, para. 46). This is particularly prevalent in some sectors in countries of destination that have a rapidly growing demand for low-cost, low-skilled migrant labour, and that are thus prone to labour exploitation.

13. Moreover, increasingly restrictive and exclusionary immigration policies, including criminalization and detention of irregular migrants, insufficient channels for regular migration and family reunification, and lack of regular access to the labour market for asylum seekers, refugees and migrants, while rarely achieving their purpose, further contribute to an increase in the exploitation of migrants, including through trafficking (A/HRC/26/37/Add.2, para. 46).

C. Trafficking and conflicts

14. Violent conflicts and humanitarian crises fuel trafficking in persons. Situations such as the persecution of minorities, arbitrary detention, torture, rape, kidnapping and enforced disappearance, the destruction of homes, increased food prices and progressively scarce access to water and sanitation, which increase the risk of illness and starvation, lead to forced internal and international displacement of the population and forced migration. In their search for a safer and better life, many fall prey to traffickers and exploiters.

15. Trafficking is a feature of armed conflict as well as of post-conflict situations[5] and usually has a strong gender dimension. For instance, men and boys are trafficked for the purpose of supplying combatants to supplement fighting forces. Armed conflicts also increase the risk of women and girls being sexually exploited, which includes being abducted and forced into sexual slavery and/or forced prostitution.[6] Those victims may be transported across international borders before being sold and trafficked to other regions or countries.[7] They can also be trafficked for the purposes of forced labour for armies and armed groups. In addition, arranged marriages or false promises of domestic work abroad that are expected to provide children with a better life often render them vulnerable to trafficking for the purposes of commercial sexual exploitation and forced labour, including domestic servitude. Furthermore, paramilitary groups can wreak havoc on communities during armed conflicts, often forcing children to become soldiers and workers, including in the illegal drug trade.

16. Recent trends show that people fleeing conflict and emergency situations to seek asylum increasingly risk their lives in unsafe travel conditions at sea and on land. Those who survive the perilous journey are at a higher risk of trafficking because of their desperation and lack of viable options. They face continued uncertainty, physical, emotional and psychological insecurity, financial strain and lack of legal and/or social inclusion in their host communities. That lack of inclusion means they have little access to education, health care and housing. It also means they face significant barriers in accessing jobs in the formal labour market and can often only find work in the informal economy. By its very nature, the informal sector is unregulated, making it an ideal environment for unscrupulous employers and/or intermediaries to exploit and traffic workers. With the

[5] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights and Human Trafficking*, Fact sheet No. 36, p. 43.

[6] See In-depth study on all forms of violence against women: report of the Secretary-General (A/61/122/Add.1), para. 143.

[7] See the report of the Special Rapporteur on violence against women, its causes and consequences, Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997–2000) (E/CN.4/2001/73), para. 53.

considerable pressure on children to help provide financial stability to their families during humanitarian crises, those children may not only be vulnerable to trafficking, but they will also be more likely to work in the unregulated informal sector, as they do not receive an education.[8]

17. In post-conflict situations, the association between military, peacekeeping, humanitarian and other international personnel and private contractors, organized crime and the growth of trafficking in women and children for sexual exploitation has raised global concerns.[9] It has been reported that an international presence fuels the demand for work and services produced through trafficking and exploitation, in particular sexual services and forced labour. Various factors, such as a vulnerable population and fragile/non-existent institutions, including weak law enforcement, can combine to create a climate of impunity in which international personnel involved in criminal exploitation and trafficking are not investigated, apprehended or prosecuted.[10] Moreover, unclear contractors' engagement regulations are likely to fuel abusive practices the dynamics of which have not yet been fully understood, such as deceptive recruitment practices in countries of origin, followed by exploitative employment by military contractors in conflict areas.

D. Protecting children on the move

18. Trafficking of children is on the increase globally, with girls being affected the most. The recently released *Global Report on Trafficking in Persons 2014* also notes significant regional differences concerning child trafficking, with children comprising a majority of detected victims of trafficking in Africa and the Middle East.[11]

19. The mandate's work has confirmed that girls and boys are trafficked for a variety of reasons, including for purposes of sexual exploitation, such as in prostitution and in the production of child pornography. Furthermore, they are trafficked for forced and exploitative labour in farms and factories and on fishing boats, for forced criminal activities, for forced and organized begging, and for domestic servitude in private households. While much trafficking of children involves movement across international borders, many countries experience the phenomenon of internal child trafficking.

20. The mandate found that in certain regions, trafficked children, like adults, are often obliged or induced by their traffickers and exploiters to commit crimes,[12] inter alia, pickpocketing, burglary, and drug cultivation and transportation. In spite of non-punishment clauses in regional and international legal instruments,[13] the children are often then prosecuted, imprisoned and/or deported for the illegal activities they have carried out as a direct consequence of their situation as trafficked persons, instead of being considered as victims of trafficking.

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[8] UNHCR, *The Future of Syria: Refugee Children in Crisis* (2013).

[9] UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008), p. 98.

[10] OHCHR, *Human Rights and Human Trafficking*, pp. 47–48.

[11] UNODC, *Global Report on Trafficking in Persons 2014*, p. 11.

[12] See, for example, A/HRC/23/48/Add.2, para. 28, A/HRC/26/37/Add.4, paras. 16 and 17, and A/HRC/20/18/Add.2, para. 16.

[13] See, for example, Council of Europe Convention on Action against Trafficking in Human Beings, art. 26; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, principles 7 and 8; Basic principles on the right to an effective remedy for trafficked persons, art. 7 (f) (A/69/33797, annex); United Nations Global Plan of Action to Combat Trafficking in Persons (General Assembly resolution 64/293, annex).

21. Child victims of trafficking need specific assistance, protection and support that often differ substantially from those given to adults and they require child-specific and child-centred measures in relation to identification, protection and assistance that are based on the principles and provisions of existing human rights law (A/HRC/26/37/Add.2, paras. 39–42). In particular, appropriate procedures must be put in place to assess the best interests of the child in every case, before any decision is made regarding the child concerned, including assistance measures and eventually repatriation.

E. A gendered perspective to trafficking

22. Women are significantly involved in trafficking in persons, both as victims and offenders. Data regarding women are among the most interesting findings in the UNODC *Global Report on Trafficking in Persons 2014*, which confirms that women and girls are disproportionately exploited not only for the purposes of sexual but also labour exploitation. In some regions, such as in South and East Asia, in Africa and the Middle East, women are even the majority of people exploited as forced labour.

23. Men and boys can also become victims of trafficking, particularly for forced labour and to a lesser extent for sexual exploitation. However, lack of awareness about the involvement of men as trafficked persons has resulted in identification failures, as well as significant discrimination against male victims, particularly in terms of access to protection and assistance (A/HRC/26/37/Add.2, para. 34).

24. With regard to perpetrators, while the majority of traffickers are men, women constitute 28 per cent of convicted trafficking offenders.[14] It is not uncommon for women victims of trafficking to be convicted for offences connected with, or arising out of, their trafficking situation, as a result of coercion by their perpetrators to undertake criminal activities. In those situations, they often come to the attention of the authorities primarily as offenders, whilst they should rather be identified as victims of trafficking. On the other hand, in some cases women start out as victims of trafficking and, as a means of escaping their own victimization, turn into perpetrators, undertaking the most visible and dangerous criminal tasks. In that regard, the mandate has noted the involvement of women traffickers in areas such as the recruitment and controlling of children for forced labour and domestic servitude, and of women and girls for sexual exploitation (A/HRC/23/48/Add.2 and A/HRC/26/37/Add.4).

25. Some forms of trafficking mostly involve women and girls, who comprise the vast majority of people trafficked for sexual purposes and for labour exploitation in domestic servitude. Moreover, women are also trafficked for the purpose of forced and servile marriages (A/HRC/21/41).

26. Assistance and support measures should take into account a gendered perspective, building upon good practices in relation to the field of sexual exploitation, especially those based on solidarity and the help that women can provide to each other, and that survivors can provide to actual, potential and presumed victims of trafficking.

F. Trafficking and social inclusion

27. The notion of social inclusion of victims of trafficking is a well-established element in the context of integration/reintegration of victims in the country of destination or in their

[14] UNODC, *Global Report on Trafficking in Persons 2014*, p. 10.

home country.[15] The social inclusion of victims of trafficking prevents their further victimization and is also a preventive measure against retrafficking.

28. Social inclusion options for victims of trafficking, such as access to housing, social protection, health care, education and employment, are vital in countries of destination, transit and origin. In most cases, the capacity of countries to offer viable long-term social inclusion options for victims, in particular those returning to their country of origin, is limited owing to factors such as poverty, unemployment and weak social structures. On the other hand, in countries of destination social inclusion is hampered by a number of factors, including restrictive migration policies and poor labour market regulations. As a result, in many countries trafficked persons, even after being identified as such and having undertaken a rehabilitation and reintegration process, are not allowed to work or regularize their residence status; rather, they are repatriated at the end of criminal proceedings. In the absence of viable social inclusion options for victims of trafficking, it will be difficult to break the cycle of trafficking and retrafficking.

IV. Legal and policy framework

29. Trafficking is a grave violation of a number of human rights, especially the right to liberty and the right not to be held in slavery or involuntary servitude, the right to be free from cruel and inhumane treatment, the right to be free from violence and the right to health. The Special Rapporteur's framework for action will be guided by existing international and regional human rights instruments and principles relating to trafficking in persons.

A. International human rights mechanisms

30. Prior to the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also referred to as the Palermo Protocol), trafficking in persons was addressed in various instruments, including the 1926 Slavery Convention, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Other international normative documents also contain provisions against trafficking of persons, such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the sale of children, child prostitution and child pornography.

31. In December 2003, the Palermo Protocol entered into force and has since been ratified by many States.[16] The purposes of the Protocol are to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of trafficking, with full respect for their human rights; and to promote cooperation among States parties in order to meet those objectives. UNODC offers practical

[15] Basic principles on the right to an effective remedy for trafficked persons, art. 9 (A/69/33797, annex); OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, guideline 6; Council of Europe Convention on Action against Trafficking in Human Beings, art. 15, para. 4.

[16] As at 27 January 2015, the Protocol had 117 signatories and 166 parties.

help to States in the implementation of the Protocol, giving guidance for the drafting of laws and the creation of comprehensive national anti-trafficking strategies, and assisting with resources to implement them.

32. In addition, several ILO instruments are also of relevance to combating trafficking in persons, including ILO Conventions No. 29 (1930) concerning Forced or Compulsory Labour; No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; No. 105 (1957) concerning the Abolition of Forced Labour; No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation; No. 138 (1973) concerning Minimum Age for Admission to Employment; and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Of particular importance is the Protocol to the Forced Labour Convention, 1930 which came into force in 2014, complementing ILO Convention No. 29 and re-enforcing existing international law. The Protocol creates new obligations to prevent forced labour, to protect victims and to provide access to remedy, such as compensation for material and physical harm. It is also supported by a recommendation that provides technical guidance on its implementation.

33. ILO Convention No. 189 (2011) concerning decent work for domestic workers, which entered into force in 2013, and its Recommendation No. 201 extend basic labour rights to domestic workers, including those in private households, who are without clear terms of employment, unregistered and excluded from the scope of labour legislation. It stresses States' duty of diligence in effectively eliminating child labour and sets a minimum age for domestic workers.

B. Regional human rights mechanisms

34. The regional specificities of trafficking in persons necessitate regional and subregional anti-trafficking instruments and mechanisms that are at the interface of international action and local realities.

1. Europe and Central Asia

35. The Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force in February 2008, applies to all forms of trafficking, whether national or transnational, all victims of trafficking and all forms of exploitation. The Convention is open to ratification by States which are not members of the Council of Europe. The countries which have signed up to the Convention are monitored by the Group of Experts on Action against Trafficking in Human Beings. The Council of Europe also supports governments in the implementation of the Convention and the recommendations emerging from its monitoring process.

36. The Organization for Security and Cooperation in Europe (OSCE) has been addressing trafficking in persons as a major concern since 2000, when the first Ministerial Council decision on enhancing OSCE efforts to combat trafficking in human beings was taken. In 2003, the OSCE Action Plan to Combat Trafficking in Human Beings was adopted and in 2006 the Special Representative and Coordinator for Combating Trafficking in Human Beings was appointed. In 2007, a Platform for Action against Human Trafficking was adopted, and in 2013, the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later was endorsed.

37. In Central Asia, in 2005 the Commonwealth of Independent States (CIS) adopted the Agreement on the Cooperation of the CIS Member States in Combating Trafficking in Persons, Human Organs and Tissues, followed by the adoption in 2006 of the Decision on the Programme of Cooperation of the CIS Member States in Combating Trafficking in

Persons for the period 2007–2010. Finally, a CIS draft Programme of Action for 2007–2010 was adopted, to support the implementation of the 2005 Agreement and facilitate efficient cooperation at the regional level for the prevention and suppression of trafficking in persons and the rehabilitation of victims.

2. Middle East and North Africa

38. Within the framework of the League of Arab States, the Arab Initiative to Build National Capacities to Combat Human Trafficking in the Arab Countries was launched in March 2010 by the Council of Arab Ministers of Justice. The Initiative is aimed at combating trafficking in persons through developing the criminal justice system in Arab States, for example by the capacity-building of law-enforcement bodies, prosecutors, members of the judiciary and the media.

39. Other regional instruments for addressing trafficking in persons are the Arab Framework Act on Combating Trafficking in Persons (2008), which serves as a platform from which to spearhead action against trafficking in persons, and the Arab Charter of Human Rights (2008), which, inter alia, prohibits trafficking in human organs; and slavery and servitude, forced labour and trafficking in persons for the purposes of prostitution or sexual exploitation or the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict; and has extensive provisions on the right to decent work freely chosen and on the right to development.

40. The Gulf Cooperation Council has also taken initiatives to curb trafficking in persons in the subregion, including through capacity-building workshops and the development of guiding principles to combat trafficking in persons in the region.

3. Latin America and the Caribbean

41. In this region, the 1994 Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)[17] contributed to the anti-trafficking legal framework. Other instruments, such as the 2005 Montevideo Declaration against Trafficking in Persons in MERCOSUR (Common Market of the South) and Associated States, the 2008 Recommendations of the First International Congress of MERCOSUR and Associated States on Trafficking in Persons and Child Pornography, the Work Plan against Trafficking in Persons in the Western Hemisphere (2010–2012, later extended for two years, and 2015–2018), the Inter-American Declaration against Trafficking in Persons ("Declaration of Brasilia", 2014) and the Brazil Declaration on a Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean (Cartagena+30, 2014), further consolidated regional efforts to eradicate human trafficking.

42. The commitment to promote effective measures to combat trafficking in persons was reaffirmed by the member States of a number of regional and subregional organizations, in particular MERCOSUR, the Andean Community, the Union of South American Nations, the Central American Integration System and the Organization of American States (OAS). OAS is strongly engaged in combating trafficking in persons on the American continent. At the political level, the OAS General Assembly has adopted resolutions that express the commitment of member States in that regard. At the level of the secretariat, the OAS Anti-

[17] Article 2 of the Convention defines violence and article 2 (b) lists trafficking in persons as a form of violence against women.

Trafficking in Persons Unit provides specialized training and assistance to member countries to implement the Palermo Protocol and the recommendations stemming from the OAS meetings of national authorities on trafficking in persons.

4. Asia-Pacific region

43. A number of initiatives have been launched to combat trafficking in persons in the Asia-Pacific region, including the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted by the States members of the South Asian Association for Regional Cooperation in 2002. In addition, the Association of Southeast Asian Nations (ASEAN) launched its first programme, the Asia Regional Cooperation to Prevent People Trafficking Project (2003–2006), which was implemented by the Government of Australia. The Project focused on criminal justice responses to trafficking in partner countries. Following its success, the Project was extended in 2011 as the Asia Regional Trafficking in Persons Project. ASEAN also adopted the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004), followed by the adoption of a work plan to implement the Declaration. An ASEAN convention on trafficking in persons and a regional plan of action are expected to be finalized and adopted in 2015.

44. In the Greater Mekong subregion, the Coordinated Mekong Ministerial Initiative against Human Trafficking, comprising six States (Cambodia, China, the Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam), has been addressing trafficking issues since 2004 through subregional plans of action, task forces at various levels and other mechanisms.

45. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, a consultative mechanism launched in 2002 by ministers of over 50 countries in the Asia-Pacific region and beyond, also works on practical anti-trafficking and anti-smuggling measures in the region.

5. Africa

46. The African Charter on Human and Peoples' Rights,[18] the African Charter on the Rights and Welfare of the Child,[19] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[20] provide the legal framework for combating trafficking in persons. Additionally, the Migration Policy Framework for Africa (2006) provides the overarching policy of the African Union on migration issues, including human trafficking. The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006) provides specific recommendations to be implemented by regional economic communities and member States on prevention of trafficking, protection of victims of trafficking and prosecution of those involved in the crime of trafficking. Furthermore, the African Union Horn of Africa Initiative on Human Trafficking and Smuggling (Khartoum Declaration, 2014) focuses on, inter alia, areas such as addressing the social, economic, environmental, cultural, security and political factors that make people vulnerable to human trafficking.

47. Subregional initiatives include the Economic Community of West African States (ECOWAS) Declaration on the Fight against Trafficking in Persons (2001) and the

[18] Arts. 2, 5, 15, 18, paras. 3, 60 and 61.

[19] Art. 29 in particular.

[20] Article 4 (2) (g) prohibits trafficking in children and women and requires States to prosecute the perpetrators of such trafficking and protect those at risk. Other relevant articles are articles 2, 3, 11, 13 and 24.

ECOWAS Initial Plan of Action against Trafficking in Persons (2002–2003). Subsequent plans of action against trafficking in persons have also been adopted. Moreover, the ECOWAS and Economic Community of Central African States biregional Plan of Action to Combat Trafficking in Persons, especially Women and Children (2006–2009), the related resolution and a multilateral cooperation agreement have further strengthened subregional initiatives to curb trafficking. The biregional Plan of Action reaffirmed the ECOWAS Initial Plan of Action and extended efforts to combat trafficking into the Central African region. In addition, the Southern African Development Community Plan of Action to combat trafficking in persons, the revised African Union Plan of Action on Drug Control and Crime Prevention (2007–2012 and 2013–2017) can be cited as examples of subregional initiatives. Joint cooperation between intergovernmental organizations, such as between the United Nations and the African Union, in the Asian-African Legal Consultative Organization or within the Commonwealth can be cited as joint actions to address human trafficking.[21]

V. Agenda-setting

48. Building upon the work of her predecessors, and in accordance with Human Rights Council resolution 26/8, the Special Rapporteur aims to (a) promote the prevention of trafficking in persons in all its forms and the adoption of effective measures to uphold and protect the human rights of victims of trafficking in persons; (b) promote the effective application of relevant international norms and standards and contribute to their further improvement; (c) identify, share and promote good practices in order to uphold and protect the human rights of victims of trafficking in persons and to identify protection gaps, including with regard to the identification of victims of trafficking in persons; and (d) examine the impact of national, regional and international anti-trafficking measures on the human rights of victims of trafficking in persons with a view to proposing adequate responses to challenges.

49. To that end, the Special Rapporteur will advocate a human rights-based and victim-centred approach to promote and protect the human rights of victims of trafficking, especially women and children, guided by international human rights law and standards, including the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

50. The Special Rapporteur will adopt a gendered perspective on trafficking which acknowledges that both women and men can be involved in trafficking and provides a better understanding of how to address the similarities and differences in the trafficking experience of women and men. In her work, she plans to pay particular attention to understanding the characteristics of trafficking crimes from a gender perspective to ensure the adoption of targeted measures. A gender perspective is necessary to understand why women constitute the majority of victims of trafficking in certain sectors, and why men are less likely to be identified as victims of trafficking and less likely to be reached by existing support measures for trafficked persons. In addition, the compounded effects of various types of exploitation which affect women disproportionately should be examined. For instance, in the agriculture sector, women trafficked for labour exploitation who work in the fields during the day are often sexually exploited at night by fellow workers and/or brokers and intermediaries.

51. Finally, the Special Rapporteur will be guided by the best interests of the child in all actions concerning trafficked girls and boys, whether undertaken by public or private

[21] A/HRC/10/16, paras. 24 and 25.

institutions, courts of law, administrative authorities or legislative bodies. She expects to look into existing identification, protection and assistance gaps in relation to children who have been trafficked for various purposes, with the aim of providing insights on issues such as the procedures for determining the best interests of the children, access to justice, provision of unconditional assistance and effective remedies including compensation for such children.

A. Focus on prevention of all forms of trafficking in persons

52. In continuation of the broad interpretation of trafficking in persons adopted by the mandate, the Special Rapporteur will embrace and further develop a comprehensive understanding of trafficking for any illicit purpose. This includes — but is not limited to — trafficking in adults and children for sexual purposes, for labour exploitation, for exploitative adoption and for participation in armed conflicts; trafficking in women, men and children for forced labour and other forms of exploitation, such as exploitation in criminal or illicit activities, or forced and organized begging; trafficking in women and girls for forced and servile marriages, sexual exploitation and forced labour, including domestic servitude; and trafficking in persons for the removal of organs (A/HRC/26/37, para. 36).

53. The Special Rapporteur wishes to underline that trafficking should be seen and tackled not only as a crime, but as an economic and social phenomenon, linked with global economic trends. She believes that an inclusive and holistic approach to the prevention of trafficking in persons requires addressing the systemic/underlying social factors that create vulnerabilities in victims and potential victims of trafficking.

54. With a view to preventing all forms of trafficking, the Special Rapporteur also intends to develop, through research, thematic studies and other means, an understanding of new and emerging trends in trafficking, such as the consequences and impacts that conflicts and humanitarian crises may have on trafficking, on which there is a dearth of information.

55. In addition, she wishes to explore further the link between mixed migration flows and trafficking, in order to recommend effective measures, aimed at preventing exploitation or further exploitation of socially vulnerable people fleeing death, torture or other forms of violence such as domestic violence, or unemployment, destitution and extreme poverty. That includes exploring ways to increase opportunities for regular migration and family reunification, and for non-exploitative employment, with the aim of preventing trafficking by ensuring full respect of migrants' rights, in line with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[22]

56. Furthermore, the Special Rapporteur expects to focus on the prevention of labour exploitation, including of vulnerable or marginalized groups such as migrants, children, national, ethnic or racial minorities, asylum seekers and refugees, by engaging with businesses, trade unions and other relevant parties, and by further exploring ways to better regulate and monitor the activities of recruitment and employment agencies, with a view to preventing abusive practices leading to debt bondage, trafficking and exploitation.

57. While the Special Rapporteur intends to accord priority to those thematic areas, she will also continue to follow up on thematic concerns addressed by her predecessors, such as the issue of trafficking for the purpose of sexual exploitation, including of children, especially as a consequence of conflicts, and in connection with labour exploitation, including domestic servitude.

[22] General Assembly resolution 45/158.

B. Focus on promotion and protection of the human rights of victims

58. The Special Rapporteur believes that the human rights of victims of trafficking should be placed at the centre of protection measures taken to address trafficking. That includes the protection of victims from further exploitation and harm, and their access to adequate assistance, support and remedies.

59. Comprehensive assistance and support to victims and potential victims of trafficking are crucial for an effective fight against trafficking in persons on the one hand, and are instrumental to accessing justice and effective remedies on the other hand. Not all trafficked and exploited persons will be able or willing to report their exploiters or participate in legal proceedings against them. All victims should, however, be enabled to do so if they wish.

60. Currently, assistance and support to exploited and trafficked persons are most commonly dependent on three main factors: a person's immigration/residence status; the initiation of criminal proceedings for the crime of trafficking; and cooperation with criminal justice actors. As a result, assistance, support and ultimately access to remedies remain out of reach for a large number of trafficked and exploited persons who are afraid of being deported or detained, and/or who distrust the authorities and are afraid of losing the possibility of pursuing their migration project. In addition, there are indications and concerns that the current set-up of most assistance and support mechanisms might result in discrimination against victims who are not willing or able to cooperate with law enforcement. Assistance and support to child victims of trafficking and other exploited and vulnerable children also require that they be provided with appropriate assistance and protection, taking full account of their human rights and special needs.

61. In particular, protection and assistance should not be made conditional upon the capacity or willingness of victims to cooperate with law enforcement agencies, regardless of whether legal proceedings are initiated or charges pressed against their traffickers and exploiters, or whether the crime has been legally qualified as trafficking or as another or less serious crime. In this regard, the Special Rapporteur expects to further explore the need for unconditional access to a range of support services for victims of trafficking, including children, who are frequently left without assistance or the necessary support to access remedies, including compensation — a situation that exacerbates the risk of further human rights violations.

62. Building on the existing work of the mandate,[23] in particular the basic principles on the right to an effective remedy for trafficked persons (A/HRC/26/18, annex) and A/69/33797), the Special Rapporteur intends to analyse laws, policies and practices around the world and take stock of promising practices and lessons learned on the provision of unconditional assistance to victims and potential victims of trafficking. She expects to provide guidance to policy makers and practitioners on better implementing the right to assistance and support, and maximize outreach and impact, thereby contributing to more effective prevention and prosecution.

63. Additionally, the Special Rapporteur envisages building upon the work of the mandate in the area of protection of the rights of victims of trafficking and access to justice. In that regard, she intends to further follow up on the basic principles on the right to an effective remedy for trafficked persons, which provide for remedies for victims of trafficking, including restitution, rehabilitation, compensation, satisfaction and guarantees

[23] See A/64/290, paras. 91–95, and A/64/290, paras. 80–81. See also UNHCR, Guidelines on International Protection No. 7.

of non-repetition, and call on States to ensure that access to those measures shall not depend on the victim's capacity or willingness to cooperate in legal proceedings. When looking into remaining gaps in the conceptualization of the right to an effective remedy and the operationalization of the basic principles at the national level, the Special Rapporteur expects to further delve into issues such as the possible types of trafficking exploitation covered by the principles, what the barriers to access to remedy are, whether the nature of the State responsibility affects the content of the reparation, the available forms of reparation, the accessibility of compensation funds to victims and the conditions for the protection of victims' rights in out of court settlements .

64. Moreover, international law mandates States to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, to assist and protect victims of trafficking and to provide access to remedy. As trafficking in persons is most often perpetrated by non-State actors, compliance with the due diligence principle is critical to ensure State accountability for the protection of the rights of victims and potential victims. However, the standard of due diligence as it relates to trafficking in persons has not been comprehensively articulated, either by the mandate of the Special Rapporteur or elsewhere. Therefore, the Special Rapporteur is of the view that additional guidance would be necessary to better equip States for the actions required to comply with their due diligence obligations.

C. Engaging with States, the private sector and social actors

65. Trafficking in persons requires a concerted effort by all stakeholders if it is to be effectively addressed. In view of this, the Special Rapporteur will endeavour to continue partnering and cooperating with States, both those that are parties to the Palermo Protocol and those that are yet to ratify it. She is also committed to continue engaging with non-State actors on the role they can or should play in preventing and responding to trafficking. In particular, she will consider civil society organizations as strategic partners — not only service providers — to be included in the process of designing and implementing targeted anti-trafficking measures.

66. Trafficking feeds into a global market that seeks out cheap, unregulated and exploitable labour and the goods and services that such labour can produce. With regard to the private sector, the key role that business actors can play in removing trafficking in persons from the supply chains is widely acknowledged.

67. The mandate has devoted attention to the extent to which trafficking in persons has emerged as a key challenge and risk in a wide range of industries and sectors integrated into global markets, despite corporate social responsibility programmes. This includes a thematic report to the General Assembly (A/67/261) on the issue of trafficking in global supply chains which examined the different ways human trafficking manifests itself in the global economy, the response of global businesses, existing and emerging strategies to combat abuse, and the immediate and long-term steps necessary for business leaders to take effective and sustainable action. That work was followed in 2012 by an expert meeting with representatives of business enterprises, trade unions, non-governmental organizations, academia and international organizations that focused on understanding the relationship between human trafficking and global supply chains, and the risks run by workers and business.[24] In addition a panel on preventing trafficking in global supply chains was convened by the previous mandate holder on the fringe of the annual Forum on Business

[24] Available from www.ohchr.org/EN/Issues/Trafficking/Pages/GlobalSupplyChains.aspx.

and Human Rights in 2013.[25] The mandate has also developed a draft checklist of indicators and benchmarks that enterprises could use to assess the risks of human trafficking and forced labour in their supply chains. They are intended to build on and complement the Guiding Principles on Business and Human Rights, as well as existing important initiatives developed by enterprises themselves and civil society organizations (see A/HRC/23/48/Add.4).

68. The Special Rapporteur will continue to build on the work of the mandate in that field and capitalize on the momentum created by new legislation and initiatives from businesses and civil society to free the supply chains from trafficking, forced labour and slavery. On the basis of her global mandate, international standing and expertise on issues relating to trafficking in persons, the Special Rapporteur intends to continue engaging with businesses in order to encourage the establishment and effective implementation of self-regulatory action (codes of conduct and other similar mechanisms) by the private sector, with the aim of increasing awareness of the risks that trafficking entails, and encouraging them to take action to eradicate trafficking from their supply chains. That would entail the mandate holder bringing together businesses in a number of selected sectors to exchange experiences and practices among themselves, review their assessment protocols through the lens of trafficking prevention, pilot the use of the benchmarks and indicators and encourage multi-stakeholder initiatives, where they exist, to operationalize the responsibility of businesses to respect human rights.[26]

VI. Method of work

69. In undertaking her activities, the Special Rapporteur will endeavour to adopt a participatory approach, in the form of consultations and constructive dialogue with all stakeholders, including victims of trafficking, civil society and the private sector.

A. Country visits

70. The Special Rapporteur will continue to undertake country visits to help ground the mandate's understanding of the problem of trafficking in national realities and to forge relationships with those on the front line, while also providing States and their partners with an opportunity to access information, expertise and insight. The factors to be taken into account in selecting country visits are varied and in doing so the Special Rapporteur will follow the usual criteria of special procedures mechanisms.[27]

71. During those visits, she will focus on the nature of the trafficking problem, the key human rights issues and the effectiveness of institutional, legal, judicial, administrative and other mechanisms to protect those rights. She will ensure that her country visits are widely consultative, involving government officials; victim support agencies and, where appropriate, victims; members of the judiciary and parliamentarians; members of United Nations country offices; and international and non-governmental organizations in the country concerned.

72. In the ensuing reports on her visits, she will highlight the major issues of concern to the mandate; forms and manifestations of trafficking; the legislative and institutional

[25] Available from www.ohchr.org/Documents/Issues/Business/ForumSession2/A-HRC-FBHR-2013-4_en.pdf.

[26] OHCHR, *Guiding Principles on Business and Human Rights* (2011).

[27] Manual of Operations of the Special Procedures of the Human Rights Council (August 2008).

framework; identification of trafficked persons; protection of trafficked persons; prosecution of perpetrators; cooperation with civil society; and international and regional cooperation. She will also provide concrete recommendations to governments and relevant stakeholders on how to tackle the issue of trafficking. As part of her commitment to continuing the work of her predecessors, the Special Rapporteur will also try to follow up on recommendations made in previous reports on countries visited.

B. Thematic studies and checklists

73. The Special Rapporteur will endeavour to develop thematic expertise through studies, reports and other tools, in order to make substantial contributions to poorly understood or new areas of concern. The thematic areas will be carefully chosen on the basis of their relative importance and urgency, as well as the capacity of the Special Rapporteur to make a contribution to shaping international standards and promoting awareness in the chosen area. In this regard, some of the themes the Special Rapporteur has already identified as priorities are to be found in section III of the present report.

74. The Special Rapporteur will actively seek to promote normative clarity around trafficking and to help flesh out the substantive content of key rules and obligations where that is required. That work is expected to result in clear anti-trafficking tools and recommendations, checklists, indicators and benchmarks that are based on existing international standards as recognized in the major human rights treaties as well as the specialist trafficking instruments. To that end, the Special Rapporteur intends to convene consultations and expert group meetings and regular exchanges with a variety of stakeholders.

C. Consultation and cooperation

75. Trafficking in persons is a critical issue for every country, affecting many different groups and cutting across multiple sectors. The range of current and potential stakeholders is accordingly very wide. The Special Rapporteur believes that trafficking will be fought successfully if all stakeholders work in partnership, across borders and across all parts of society. In that regard, she will work together with governments, national rapporteurs and equivalent mechanisms dealing with trafficking in persons, national human rights institutions, intergovernmental organizations and specialized agencies, to promote cooperation and concerted action at the international, regional and national levels. She will also enhance cooperation with existing regional, subregional and national anti-trafficking mechanisms, including national coordinating bodies, national rapporteurs or equivalent mechanisms and national human rights institutions.

76. In carrying out her mandate, the Special Rapporteur will consult civil society and non-governmental organizations working to combat trafficking, as well as persons and institutions with particular expertise (such as academia and certain professional categories). The Special Rapporteur will continue to consult and partner with a wide range of national and local organizations, especially during her country visits.

77. The Special Rapporteur will also reach out to the private sector, engaging with businesses and employers in particular, to look out for possibilities for public-private partnerships that will address the demand for cheap labour in the private sector, unethical recruitment practices and other practices relating to the elimination of trafficking in supply chains.

D. Communication with victims

78. The mandate of the Special Rapporteur focuses on the rights and needs of victims of trafficking and the Special Rapporteur will continue to consult victims and involve them in the work of the mandate. The Special Rapporteur is convinced that the involvement of victims is critical to ensuring that the measures taken to address trafficking benefit those in need; that unintended harmful consequences are anticipated and avoided; and that opportunities for change and improvement are identified in a timely way.

79. The Special Rapporteur is explicitly mandated to respond effectively to reliable allegations of human rights violations with a view to protecting the rights of actual or potential victims of trafficking. In accordance with established procedure, the Special Rapporteur will communicate cases to States, requesting clarification and action.[28]

E. Cooperation with United Nations human rights mechanisms and organizations

80. The Special Rapporteur intends to work in collaboration with other special procedures mechanisms which examine issues relating to trafficking, including but not limited to: the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the sale of children, child prostitution and child pornography; and the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Special Rapporteur will continue to strengthen the work of the trafficking mandate while delineating its intersections with related mandates. In this regard, she will try to identify possible joint initiatives that can complement each other's work, such as joint communications on allegations of human rights violations and the issuance of joint press statements.

81. In the course of her work the Special Rapporteur intends to strengthen the mandate's engagement with relevant treaty bodies[29] in order to create synergy to ensure States' accountability with regard to the issue of trafficking in persons. She will benefit from their expertise and their concluding observations, general comments/recommendations and case law on issues relating to trafficking, to which she also expects to contribute when relevant. She also believes that the universal periodic review contributes to strengthening efforts aimed at combating trafficking in persons as part of a holistic review of a country's human rights situation.

82. The mandate holder also values cooperation with United Nations agencies, international organizations and existing coordination mechanisms around the world and intends to build on those partnerships to consolidate a collaborative approach to the fight against trafficking.

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[28] See www.ohchr.org/EN/Issues/Trafficking/Pages/complaints.aspx.

[29] Including the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

VII. Conclusion

83. **The Special Rapporteur looks forward to fulfilling the requirements of her mandate, as outlined in Human Rights Council resolution 26/8, and to constructive and fruitful cooperation with diverse stakeholders in all regions of the world. She particularly emphasizes her desire for constructive engagement with United Nations Member States and encourages them to respond positively to her requests for information or for country visits, while emphasizing that the mandate remains available to provide assistance to States and to respond to their requests to the fullest extent possible. The Special Rapporteur reiterates the importance that she places on the role and views of non-governmental organizations, including in providing information to her and engaging with and assisting her fully as she conducts her work on combating trafficking in persons, especially women and children.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro

Addendum

Mission to Malaysia* **

Summary

The Special Rapporteur on trafficking in persons, especially women and children, visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. In the present report, the Special Rapporteur highlights the country's commitment to combating trafficking in persons, as evidenced by its legislative and policy framework, and its multidisciplinary approach in taking anti-trafficking measures, which involves key Government agencies and some civil society organizations (CSOs). She nonetheless expresses concern about, inter alia, the focus on trafficking for the purpose of sexual exploitation to the neglect of other forms of trafficking, particularly labour trafficking; and the restrictive national immigration policy focused on rapid deportation of irregular migrants, which does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. Other concerns include the placement of victims in shelters without freedom of movement and the capacity gap of enforcement officials which is further exacerbated by reported prevalence of corruption of some officials. On that basis, the Special Rapporteur makes a number of recommendations to the Government, including with regard to ratification of key international legal instruments, strengthening of national legislation and policies to combat trafficking, and increasing capacity-building activities for government officials. The Special Rapporteur also encourages the Government to address key gaps in the assistance provided to victims of trafficking, especially in terms of providing them with effective remedies, and increasing the involvement of CSOs in the provision of assistance to victims. She also

* Late submission.

** The summary of the present report is circulated in all the official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

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calls on the Government to improve the justice delivery system and strengthen its regional and international engagement in cooperating with countries of origin to address the root causes of trafficking and create more opportunities for safe migration.

Annex

[English only]

Report of the Special Rapporteur on trafficking in persons on her mission to Malaysia

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I. Introduction and methodology

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Malaysia from 23 to 28 February 2015, at the invitation of the Government. The objectives of the visit were to examine the prevalent forms of trafficking in persons in the country and to assess the effectiveness of measures taken by the Government to combat trafficking in persons and to protect the human rights of trafficked persons.

2. During her mission, the Special Rapporteur visited Kuala Lumpur, Melaka, Rembau and Kota Kinabalu in the State of Sabah. She met high-level officials, including the Minister and Senior Deputy Secretary General (Security) of Home Affairs, the Director General of the Labour Department (Peninsular) of the Ministry of Human Resources, the Minister of International Trade and Industry, the Minister of Women, Family and Community Development, and the Deputy Secretary General (Multilateral Affairs) of the Ministry of Foreign Affairs. She also met with the Chief Registrar of the Federal Court, the Deputy Inspector General of Police of the Royal Malaysia Police and the Secretary General of the Ministry of Plantation Industries and Commodities. She also exchanged views with members of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants.

3. She interacted with various interlocutors, including the representatives of relevant authorities at the State level, particularly the Sabah State Government in Kota Kinabalu. The Special Rapporteur also met representatives of CSOs working in the field of trafficking in persons. She visited an immigration detention centre (Semenyih), as well as three government shelters for women (Sabah), children (Rembau) and men (Melaka) victims of trafficking and interviewed some of them. She also met with representatives of the National Human Rights Commission and civil society. Finally, she exchanged views with representatives of the United Nations agencies and programmes in the country, as well as representatives of the diplomatic community. The Special Rapporteur expresses her gratitude to the Government for its invitation and cooperation and to the CSOs for their valuable inputs

II. Main findings

A. Forms and manifestations of trafficking in persons

4. In the context of Vision 2020, a national programme which aims to propel the country to becoming a developed nation by the year 2020, Malaysia has achieved remarkable economic growth over the last five decades, bolstered by low wages, oil revenues, foreign direct investment targeted at the manufacturing sector and high global demand for its commodities, in particular palm oil.[1]

5. The Malaysian economy relies largely on foreign migrant workers. In an estimated labour force of 12.9 million in 2012, 1.6 million documented and an estimated 1.3 million undocumented foreign workers contributed to its low-wage economic growth strategy.[2] The geographic location and extended coastline of Malaysia further draw a large influx of

[1] United Nations Development Programme, Country Programme Action Plan 2013–2015, p. 6. Available from www.my.undp.org/content/dam/malaysia/docs/key_documents/CPAP%202013-2015.pdf.

[2] Ibid., p. 6.

foreign migrant workers from the Asian region, notably from Bangladesh, Cambodia, Indonesia, India, the Lao People's Democratic Republic, Myanmar, Nepal, the Philippines, Thailand and Viet Nam, who willingly embark on the journey to Malaysia in search of better employment opportunities in the manufacturing, plantation, construction and agriculture sectors and domestic work.

6. While not all cases of migration result in trafficking, there are cases of mixed migration that includes asylum seekers, refugees and migrants, who then end up being trafficked. Moreover, the prevalence of undocumented migrant workers increases their risk of becoming victims of trafficking.

7. Malaysia faces challenges as a destination and, to a lesser extent, a transit and source country for men, women, girls and boys subjected to trafficking in persons. As a destination country, it receives trafficked persons, mainly from East Africa, the Middle East and South Asia. Trafficked persons may also transit through Malaysia to destination countries in the Middle East. Malaysians are trafficked to countries such as China, France, Japan, Singapore, Thailand and the United Kingdom of Great Britain and Northern Ireland.

8. The present report focuses on the prevalent forms of trafficking in Malaysia as a destination and transit country and assesses the effectiveness of its counter-trafficking responses within the country. The Special Rapporteur learned that the forms of trafficking listed below are particularly widespread in the country.

1. Trafficking for labour exploitation

9. Typically, cases of labour trafficking in Malaysia involve low- and semi-skilled migrant workers from the Asia and Pacific region intended for arduous and unpleasant work in the agricultural, construction and manufacturing sectors and domestic work. There are also indications that fishermen mainly from Cambodia and Myanmar are trafficked for bonded labour to work on Thai fishing boats in Malaysian waters. The Special Rapporteur was informed that those who escape from those boats to the Malaysian coast are often re-trafficked to palm oil plantations in Sarawak State.

10. Victims of labour trafficking are recruited through fraud and deception about the type and conditions of employment by unscrupulous recruitment agents — in source countries and Malaysia — and employers; most commonly victims are exploited through breaches of contracts, payment of excessive recruitment and immigration fees, reduction or non-payment of salary, excessive working hours and a lack of rest days. Many find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers (including recruitment agencies) from their journey when promises of well-paying employment turn into exploitative situations.

11. Migrant workers are dependent on their employers for their work permit, which is necessary to legally remain in Malaysia. This leaves trafficked workers in a vulnerable position: if they report or escape their exploitative conditions, employers can simply revoke their work permit, making them irregular migrants who will lose their livelihood and be expelled from the country. In some cases, foreign workers' vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than those for which they were granted an employment visa. Practices such as employers withholding passports are reportedly common and contribute to the trafficking situation.

2. Trafficking for domestic servitude

12. Over 300,000 migrant domestic workers are estimated to be in Malaysia,[3] the majority of whom are women from Cambodia, Indonesia and the Philippines. While all domestic workers are not victims of trafficking, a large number of those women and girls are trafficked into domestic servitude by employment agencies in their home country or Malaysia or employers in Malaysia, at times with the alleged complicity of State officials. Many fall victims to debt bondage when they assume an initial debt as part of the terms of employment. Widely reported abuses and exploitation that further contribute to the trafficking situation include breaches of contract, excessive recruitment fees, non-payment of salary, deductions from low wages, excessive working hours, a lack of rest days and the withholding of passports. Many domestic workers have also experienced unimaginable physical and mental abuse at the hand of their employers, from being deprived of food to beatings with electrical wires, scalding with hot water, harassment, psychological abuse and sexual assault.

13. Owing to the hidden nature of their work, which is carried out in private homes, and to fear of arrest and eventual deportation, such workers are unable to leave their employers and seek redress for human rights violations. In the rare instances where complaints are lodged with the police by the victims or non-governmental organizations (NGOs), those complaints are not acted upon. Instead, it is not uncommon for the victims to be intimidated for having left their employers and to be returned to those employers or their employment agency with threats, rather than being offered protection and alternative employment.

14. Moreover, underage victims, whose personal information and age are incorrectly reflected in their passports/documents by recruitment agencies, face additional distress in escaping their abusive employers for fear of being caught and reprimanded for having falsified documents.

3. Trafficking for sexual exploitation

15. Malaysia is a destination for the trafficking of women, girls and boys into the sex industry. Factors contributing to trafficking in women and children for sexual exploitation include the demand for sexual services, the prevalence of tourism and the existence of a large migrant worker community. Young foreign women (including those from East Africa, the Middle East, the Russian Federation and South Asia) are lured with false promises of legal work in Malaysia, such as domestic work, babysitting, waitressing and modelling, but are subsequently coerced into the commercial sex trade. Since 2014, CSOs have also noted an increase in the prevalence of trafficking in boys for work in the sex industry in Malaysia. Trafficking of children for sexual exploitation is reportedly emerging within communities of irregular migrants.

16. Additionally, there is a growing trend of trafficking victims to employers/businesses to gratify the sexual needs of male migrant workers. Some employers are also known to reward the performance of employees by providing sexual incentives. Moreover, there are indications of Vietnamese women and girls who enter into brokered marriages in Malaysia and are subsequently forced into sexual exploitation to repay their "marriage" debts, which range from 4,000 to 6,000 United States dollars. Trafficking of Malaysian girls and women for sexual exploitation to tourist destinations within the country has also been noted.

[3] Migrant Working Group and Northern Network for Migrants and Refugees, joint submission to the universal periodic review of Malaysia (2009), p. 1. Available from http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MY/MWG_JUMP_MYS_UPR_S4_2009_MigrationWorkingGroup_theNorthernNetworkforMigrantsandRefugees_JOINT_upr.pdf.

17. As a transit country, victims from Indonesia primarily transit through Malaysia en route to Middle Eastern countries to circumvent anti-trafficking protection measures put in place by their governments.

18. Organized crime syndicates are allegedly responsible for some trafficking cases. They usually take advantage of the vulnerable and disadvantaged situations of the victim, arrange for their travel to Malaysia and process their travel documents and visas, including student visas. Once in Malaysia, the victims' passports are confiscated and they are forced to provide sexual services to repay the debts incurred for their travel. If they refuse, they are beaten up and threatened that if they run away or go to the police they would risk imprisonment before being deported for immigration offences and/or soliciting prostitution. They are watched and accompanied at all times.

4. Other forms of trafficking in persons

19. Refugees and asylum seekers in Malaysia lack recognition of their status or the ability to work legally in Malaysia, which is not a signatory to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol thereto.[4] As a result, this category of persons is subject to becoming vulnerable to trafficking. This is especially true for Rohingya from Myanmar, who typically embark on maritime and overland journeys, often via Thailand, to reach Malaysia. Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations for labour exploitation, ending up in bonded labour to repay their debts from the transport. Others are held captive and abused in Malaysia until ransom is paid by their relatives.

20. There are also indications of child trafficking for the purpose of forced begging among the refugee population, mostly Rohingya children. Most perpetrators in the cases identified are allegedly family members or traffickers who pass off these children as their own.

21. In addition, the Special Rapporteur was informed that a significant number of refugees, asylum seekers and stateless persons, particularly those from the Filipino and Indonesian communities in Sabah and Rohingya from Myanmar, are increasingly becoming victims of trafficking. Their lack of formal recognition significantly restricts their and their children's ability to obtain education, employment opportunities, health services, freedom of movement and access to justice. This in turn makes them easy prey for unscrupulous traffickers and employers who exploit them with impunity. Their children are vulnerable to being trafficked for labour exploitation. There is also anecdotal information that undocumented older children are easily trafficked for "drug-running". Finally, there are also reports of children being trafficked for adoption purposes from Singapore to childless families in Malaysia (the destination country).

B. Criminalization of irregular migration and the impact on trafficked persons

22. The Special Rapporteur recognizes that the economy of Malaysia relies to a large extent on the low- or semi-skilled labour of migrant workers, particularly in such sectors as construction, manufacturing, services, plantation, agriculture and plantations, and domestic work. However, the Special Rapporteur observed that the approach of Malaysia to

[4] Nevertheless, Malaysia provides assistance and protection on a case-by-case basis to some refugees and asylum seekers in collaboration with the Office of the United Nations High Commissioner for Refugees and other international organizations.

migration effectively relies on the criminalization of irregular migrants. Where not carefully designed, such an approach increases the vulnerability of irregular migrants to becoming victims of trafficking because they are criminalized. She cautions that migration projects can turn into trafficking when migrants are placed in exploitative situations during their journeys or at their destination, when their rights are drastically limited or completely denied. The categorization of all migrants as irregular or undocumented is detrimental to the identification of potential victims of trafficking.

23. Irregular migration is prohibited under the Immigration Act (1959). The law envisages severe penalties for convicted undocumented workers, who are subject to fines up to 10,000 Malaysian ringitt, up to five years' imprisonment and deportation. Whipping (caning) of those convicted for irregular entry is not an uncommon penalty.

24. Undocumented migrants who are arrested may legally be held up to 14 days before being brought to a magistrate, contrary to the 24-hour time frame guaranteed in the Constitution. Sentences are passed following summary hearings in special immigration courts by magistrates, some of whom have a reportedly low capacity to deal with migration, refugee, asylum or trafficking issues. Given the expedited nature of the proceedings, it is also not clear to what extent judicial guarantees, such as legal representation and the explanation of available remedies, are systematically provided to migrants. Following these hearings, the migrants are placed in detention centres awaiting deportation.

25. The strong political inclination towards criminalizing and prosecuting irregular migrants may have unintended negative consequences for the victims of trafficking, in spite of some protection against immigration-related criminal prosecution provided for in the Anti-Trafficking Act (2007). Irregular migrants wanting to report abuse, including trafficking and labour exploitation, risk exposing themselves to the real danger of being charged for the offence of "irregular entry or stay", detained and ultimately expelled. As a result, many irregular migrants are afraid to contact the authorities and avoid seeking legal protection and remedies, even when they are entitled to them. This approach, which emphasizes national security, leads to the criminalization of victims for crimes committed while being trafficked and for which they should not be held liable.[5]

26. In order to promote safer labour migration, the Government entered into bilateral memorandums of understanding with several neighbouring countries (see part J below) that facilitate and provide legal avenues for migration and the recruitment of migrant workers from these countries. Furthermore, in an attempt to regularize the situation of irregular migrant workers already in the country, the Government launched the Illegal Immigrant Comprehensive Settlement Programme in 2011, whereby irregular migrants were allowed to register and be either legalized or deported back to their countries without prosecution. It is noteworthy that the handling of irregular migrants by Malaysia has occasionally become an issue of contention with neighbouring countries.

27. Nevertheless, opportunities for safe migration for low-skilled labour remain inadequate. The regulation of employment agencies is ineffective, regardless of the fact that licensing of new employment agencies is on hold and licenses of existing agencies will not be extended beyond 2021.

[5] See the Principles and Guidelines on Human Rights and Human Trafficking recommended by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

C. Legislative, policy and institutional framework

1. Legislative framework

(a) International and regional framework

28. Malaysia is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter, the Trafficking in Persons Protocol) and a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has also ratified the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO).

29. Regrettably, Malaysia is not party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto or the 1954 Convention relating to the Status of Stateless Persons and lacks a formal legislative and administrative framework to address refugee matters. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Domestic Workers Convention, 2011 (No. 189) and the Protocol of 2014 to the Forced Labour Convention, 1930, have also not been ratified, while the Abolition of Forced Labour Convention, 1957 (No. 105) was denounced in 1990.

30. At the regional level, Malaysia is a founding member of the Association of Southeast Asian Nations (ASEAN). It is party to a number of binding and non-binding instruments including the ASEAN Human Rights Declaration and the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries. It supports the ASEAN sectoral bodies, such as the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. As a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Malaysia continues to support the practical measures to help combat trafficking in persons and related transnational crime in the Asia and Pacific region.

(b) National framework

31. At the national level, slavery and forced labour are prohibited under section 6 of the Federal Constitution.

32. The country's Anti-Trafficking in Persons Act of 2007 was amended in 2010 and renamed the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (hereinafter, Anti-Trafficking Act). In accordance with the Trafficking in Persons Protocol, the adopted definition of trafficking in persons is comprehensive and criminalizes all aspects of trafficking, including labour trafficking (sect. 2 (g)). Trafficking in persons for the purpose of exploitation carries a penalty of up to 15 years' imprisonment and a fine (sect. 12). The offence of trafficking in persons by means of threat; use of force or other forms of coercion; abduction; fraud; deception; abuse of power; abuse of the position of vulnerability; or payments/benefits to obtain the consent of a person having control over a trafficked person is punishable by between 3 and 20 years' imprisonment and a fine (sect. 13). Profiting from the exploitation of a trafficked person can lead to up to 15 years' imprisonment, payment of fines and forfeiture of the profits from the offence (sect. 15). The offence of bringing in transit a trafficked person through Malaysia or facilitating such act can result in imprisonment of up to 7 years and a fine (sect. 15A).

33. Trafficking in children is punishable with imprisonment ranging from 3 to 20 years and a fine (sect. 14). In accordance with the Trafficking in Persons Protocol, when the trafficking offence involves children, it is irrelevant whether the consent of the trafficked child was obtained (sect. 16).

34. The law envisages punishment for trafficking offences committed by corporate bodies, employees or their agents (sect. 64). Cases of trafficking that occur in Malaysia as a source, transit or destination country are offences under the Act. It is also applicable to offences committed by Malaysian citizens and permanent residents outside Malaysia. (sects. 3 and 4).

35. In addition to the Anti-Trafficking Act, other legislation may be invoked to prosecute trafficking or trafficking-related offences. The Penal Code punishes offences that may amount to trafficking and other forms of exploitation, such as trafficking for purposes of prostitution (sects. 372 and 373) and forced labour (sect. 74). It criminalizes habitual dealing in slaves (sect. 371). Prostitution is not a criminal offence per se under the Penal Code, but soliciting prostitution leads to up to one year's imprisonment and/or a fine (sect. 372 B). Exploitation of a person for the purposes of prostitution; living on or trading in prostitution of another person; and owning and managing brothels lead to up to 15 years' imprisonment, whipping and payment of fines (sects. 372 and 372A). Moreover, foreign prostitutes or persons living on or receiving the proceeds of prostitution are considered as prohibited migrants and subject to expulsion from the country under section 3e of the Immigration Act (1955).

36. The Employment Act (1955) sets out minimum labour protection standards and is applicable to employees whose wages are RM 2,000 and below, and all manual labourers irrespective of their wages. Among other provisions, the Act provides for the limitation of working hours, the provision of paid leave and overtime pay. Its scope extends to foreign employees together with, inter alia, the Employment (Restriction) Act 1968 (Revised 1988), which governs employment permits, registration and restrictions for non-Malaysian citizens, and the Immigration Act (1957). Domestic workers, labelled as "domestic servants", are covered by the Employment Act. However, they are excluded from protection under key articles of the law, including those on fair termination of contract (arts. 12 and 14), the minimum number of working days per month (art. 16), maternity provisions (part IX), rest days (part XII), hours of work, holidays and other conditions of service (including annual and sick leave) and termination, lay off and retirement (part XIIA). They are also not within the purview of the Domestic Violence Act (1994), which provides legal protection for victims of violence in the home and supplements the Penal Code.

37. The Children and Young Persons (Employment) (Amendment) Act 2010 provides for the conditions of their employment in light work within the family, specific public entertainment, apprenticeships and work sponsored by the Government. It forbids night work and underground work for children and young persons and sets forth hours of work.

38. The Private Employment Agencies Act (1981) regulates the recruitment agencies. It requires all recruitment agencies to be licensed and to deposit a security bond, and limits the amount of fees that can be charged for recruitment services. It also provides the Director General of Labour with broad inspection and investigatory powers, including the ability to cancel licences and to dispose of the recruitment bond for breaches. Offences listed in the Act include overcharging for recruitment agency services and providing false

or incorrect information. However, complaint mechanisms are unspecified and worker rights and obligations are not defined.[6]

39. The Child Act (2001) establishes standards for the treatment of children and provides for the care, protection and rehabilitation of children in need. The Act prohibits exploitative acts often committed in the process of trafficking, such as the procurement of a child for purposes of prostitution/the purposes of sexual intercourse either within/outside Malaysia (sects. 43 and 44). Moreover, the transfer of custody or control of a child for any valuable consideration is considered an offence under section 48. It also condemns the bringing into Malaysia of a child by false pretences and the taking out of Malaysia a child without appropriate consent of his/her legal custodian (sects. 49 and 52).

40. The Passports Act (1966), which also aims at preventing the abduction and trafficking of children, criminalizes the withholding of passports and documents with payment of fine or up to 5 years' imprisonment or both (sect. 12 (d)).

41. Other legislation relevant to cases of trafficking in persons include the Maritime Enforcement Agency Act (2004), the Customs Act (1967), the Security Offences (Special Measures) Act (2012) and the Anti-Money Laundering and Anti-Terrorism Financing Act (2001).

2. Policy framework

42. Since 2010, Malaysia has been pursuing a five-year National Plan of Action to Combat Trafficking in Persons which focuses on nine programme areas, including strengthening legal mechanisms, joint action of law enforcement agencies, prevention, protection and rehabilitation, capacity-building and partnership. While considering the policy is a positive initiative to address human trafficking, particularly labour trafficking, the Special Rapporteur was not provided with any information regarding the achievements generated by the plan, its implementation and monitoring. At the time of the visit, the Special Rapporteur was informed that the action plan for 2015–2020 was being finalized.

43. Another policy relevant to the trafficking effort is the policy on the recruitment of foreign workers (1991), which provides guidelines for the treatment of foreign workers. This provides that wages, benefits and terms of conditions of employment should be similar to those for nationals, that migrant workers should have written contracts and that costs of recruitment and repatriation should be borne by the employer. Nevertheless, the Special Rapporteur received information that this policy is not often enforced.

3. Institutional framework

44. The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants was established in 2008. It is responsible for, inter alia, coordinating the implementation of the Anti-Trafficking Act in cooperation with government departments and international organizations. It is mandated to collect data and monitor migration patterns with a view to formulating and implementing anti-trafficking policies and programmes that focus on prevention and protection of victims. It also advises the Government on developments at the international level (see Anti-Trafficking Act, sect. 7).

45. The multidisciplinary structure of the Council is led by the Ministry of Home Affairs, which acts as its secretariat at the national and provincial levels. The Council comprises of the Attorney General and high-ranking officials of various government agencies, including the Ministries of Internal Security; Foreign Affairs; Women, Family

[6] See ASEAN, *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region* (2011), p. 17.

and Community Development; Human Resources; Transport; and Information, Communication and Culture. The Special Rapporteur noted with concern the absence of key government offices dealing with industry, trade, plantations and the construction and textile sectors, areas in which human trafficking may take place. She encourages the Government to pursue its intention of enlarging the Council to include additional relevant institutions at the peninsular and State levels.

46. The Council is composed of five committees: (a) the Legislation Committee, headed by the Attorney General's Chambers; (b) the Victim Protection and Rehabilitation Committee headed by the Ministry of Women, Family and Community Development; (c) the Media and Publicity Committee, headed by the Ministry of Information, Communication and Culture; (d) the Special Committee to Study the Issues of Labour Trafficking, headed by the Ministry of Human Resources; and (e) the Enforcement Committee, headed by the Royal Malaysian Police. The main functions of the latter committee are to rescue victims of trafficking and detain perpetrators, investigate cases, prevent trafficking, raise awareness and build capacity of its members.

47. Furthermore, the National Human Rights Institution plays an active role in combating trafficking in persons, as it also receives and inquires into complaints of alleged human rights violations, including complaints relating to trafficking in persons, and monitors shelters and detention facilities. It proposes and formulates policies and standard operating procedures, raises awareness and engages with stakeholders at the national, regional and international levels.

48. The Special Rapporteur commends the establishment of the Council and its initiatives to combat trafficking. However, she observed that coordination of work between government bodies remains a challenge, partly owing to their varying level of commitment to the issue of trafficking and their understanding of trafficking and its impact on/relevance to their work. Of further concern is the limited information-sharing and disjointed coordination between government bodies at the federal and State levels, particularly noted by the Special Rapporteur in Sabah, for instance, where a number of authorities appeared not to be aware of the anti-trafficking initiatives and work undertaken by the Council. Moreover, while five NGOs are formally affiliated with the Council and included in policy discussions, there is a need to widen the scope of civil society participation.

D. Identification of trafficked persons

49. Members of the Enforcement Committee of the Council, namely officers from the Anti-Trafficking Unit of the Royal Malaysian Police, the Immigration Department, the Royal Malaysian Customs, the maritime agencies and the Labour Department, have the primary responsibility for identifying trafficked persons in collaboration with each other. The identification of victims is undertaken on the basis of standard operating procedures for enforcement agencies dealing with human trafficking and smuggling of migrants developed by the Council in 2013.

50. While there is increasing recognition of trafficking for labour exploitation, trafficking in persons in Malaysia is viewed primarily as a problem concerning women and children trafficked for sexual exploitation. Statistics from the Royal Police reveal that from 2008 to 2014, 509 cases of trafficking for sexual exploitation were identified, while 291 cases of trafficking for forced labour were identified and none was identified for other forms of exploitation.[7] This is partly explained by the fact that raids and rescues conducted

[7] Royal Malaysian Police, statistics provided during the visit of the Special Rapporteur.

by the police in entertainment/sex industry are the main means of identifying victims of trafficking.

51. The Special Rapporteur heard allegations of the corruption of law enforcement officers which often hampers the effective identification of trafficked persons. She was informed of numerous cases in which immigration, police and maritime enforcement officers were directly implicated in trafficking in persons or turned a blind eye to the situations of trafficked persons. The prevalence of corruption coupled with the inadequate capacity of enforcement officers to accurately identify trafficked persons results in deep mistrust of law enforcement officers by trafficked persons and those at risk of being trafficked, such as migrants, refugees and asylum seekers.

52. There are two categories of labour officers within the Labour Department of the Ministry of Human Resources: generalists, who conduct inspections to identify forced labour in workplaces, and specialists. As they are enforcement officers, specialist labour inspectors are also empowered to identify and investigate cases of trafficking, as well as rescue victims. They also apprehend suspects and testify in court.

53. In 2014, a total of 42,804 labour inspections were conducted in the country; 30,228 in peninsular Malaysia; 7,952 in Sabah and 4,624 in Sarawak. Specialist labour inspectors investigated seven cases, of which two were identified as cases of trafficking while five cases were referred for investigation under the Employment Act. These figures suggest that cases involving the confiscation of passports or the withholding of salaries are often misidentified as labour offences owing to the absence of clarity on what trafficking for the purposes of labour exploitation is and what are other labour cases, and the fact that labour inspectors specialized in labour trafficking are too few for the number of workplaces and not sufficiently trained.

54. Other factors that contribute to the lack of identification of cases of trafficking in sectors typically linked with it is the lack of clear understanding of the issue of trafficking by authorities; an attitude which could hamper national anti-trafficking initiatives. A case in point is the apparent unwillingness of the Ministry of Plantation Industries and Commodities to identify possible situations of trafficking for labour exploitation on the grounds that the palm oil market is highly competitive and tightly regulated and that the frequent use of child labour in this sector is culturally accepted. The Special Rapporteur wishes to emphasize that, in an industry relying on low-skilled migrant workers and given the prevalent practice of recruiting foreigners to work in the industry and credible information from stakeholders, the occurrence of human trafficking cannot be excluded from this sector.

55. There is also a real danger that victims of trafficking are misidentified as irregular migrants, resulting in their arrest, detention and deportation. Once in the immigration detention centre, the Special Rapporteur found there was no possibility for potential victims to be identified and their deportation reversed. In this regard, she noted that of the four persons she interviewed at random at an immigration detention centre in the course of her visit, two could have been identified as trafficking cases by trained officers. Yet, these persons will be deported without proper assessment of whether or not their return would be safe or whether they will be at risk of re-trafficking.

56. In addition, there is a lack of appropriate infrastructures and services designed to facilitate the identification of trafficked persons, such as hotlines dedicated to trafficked victims. The Ministry of Women, Family and Community Development maintains a national helpline, which operates 24 hours a day, seven days a week to address a variety of social concerns, such as domestic violence and child abuse. Similarly, a Kuala Lumpur police hotline operates 24 hours a day to receive public complaints on a number of issues. Regrettably, these hotlines are available only in Bahasa Malaysia and English, despite the

fact that trafficked persons in Malaysia mostly speak other languages. The lack of capacity of operators to accurately identify victims from among the callers and to provide information for their protection is an additional aspect that hinders identification.

E. Protection

1. Shelters

57. Protection officers appointed by the Ministry of Women, Family and Community Development are responsible for the protection, care and supervision of victims of trafficking in shelters (see Anti-Trafficking Act, sect. 43). Protection for identified or potential victims of trafficking is provided on the basis of interim protection orders and protection orders issued by magistrates. Identified or potential victims of trafficking are placed by enforcement officers in temporary custody and brought before a magistrate within 24 hours for the purpose of obtaining an interim protection order, under which they are placed in a shelter for 14 days while an investigation is carried out. On the basis of the outcome of the inquiry of both the enforcement and the protection officers, the magistrate indicates that a person is a victim of trafficking in need of care and protection by issuing a protection order that places victims from Malaysia and those permanently residing in the country up to two years in a shelter (see Anti-Trafficking Act, sects. 44–51). Foreigners who are identified as victims of trafficking stay in a shelter for three months before being expulsed to their country of origin. Whereas those not found to be victims are immediately deported. Protection orders can be extended under exceptional circumstances, such as when the victim's evidence is still being collected.

58. In 2014, 1,684 individuals rescued were granted interim protection orders, of whom 303 were granted protection orders and placed in the government shelter. The overwhelming majority of victims identified were female (295 female and 8 male victims) mainly from Indonesia (141), Viet Nam (91) and the Philippines (31).[8]

59. The Ministry of Women, Family and Community Development currently runs eight shelters. The Special Rapporteur was impressed by the standard of the three government shelters for children, women and men victim to trafficking that she visited, which were modern, clean and provided limited access to psychological, medical, language and other support services in collaboration with a handful of NGOs. While the committed and dedicated staff in the shelters do their utmost within available resources, there is an evident lack of capacity to provide victims with comprehensive support, including psychological and legal. For instance, although trafficked victims in the shelters come from various countries and speak different languages and dialects, there are no on-site interpreters available to assist them on a daily basis. Furthermore, trafficked persons are not provided with suitable educational and vocational training during their stay in the shelter. Women and girls are provided with vocational training traditionally associated with women, such as sewing, cooking and handicrafts, which may not correspond with their ambitions and talents, or the needs of the labour market.

60. What is perhaps more alarming is that assisted victims are kept in closed shelters and deprived of freedom of movement and punished for escaping. The Special Rapporteur is concerned that, in effect, such shelters are equivalent to detention centres where trafficked persons are treated as criminals in custody rather than victims placed in a refuge

[8] See Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Progress Report 2014/2015", pp. iii–iv.

for care and protection from further harm. Victims are also prohibited from working while in shelters.

61. The fact that they are unable to leave and work outside the shelter is reported to create a strong disincentive among trafficked persons in Malaysia to be identified as such. Nearly all of the victims that the Special Rapporteur interviewed were not clear of the significance of their status and its resulting entitlement and expressed their wish to be released from the shelter to work and pay back debts.

62. Some CSOs have the capacity to provide protection and assistance to victims of trafficking. However, they are currently not legally considered protection officers and are not able to contribute to the fight against trafficking. Their support is sought on an ad hoc basis because of the lack of enabling legislation designating them as protection officers with a responsibility for the care of victims and the identification of victims of trafficking. The Special Rapporteur hopes that the pilot project being considered by the Ministry of Women, Family and Community Development to enable NGOs to manage shelters will be implemented, taking into consideration, inter alia, the need of victims and the capacities and autonomy of NGOs. Additionally, NGO-run shelters are not recognized as official places of refuge for victims of trafficking. The Special Rapporteur hopes that the intention of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants to bring about the amendment of the Anti-Trafficking Act for a more effective collaboration with CSOs is realized without delay.

2. Non-criminalization of trafficked persons

63. Section 25 of the Anti-Trafficking Act provides for the non-criminalization of identified trafficked persons for offences related to their irregular entry and unlawful residence in Malaysia, as well as the procuring and possession of fraudulent travel documents for the purpose of entering the country. However, immunity from criminalization is not provided to all the offences committed by victims as a consequence of their trafficking, although it would be possible to provide such exemptions on a case-by-case basis under the general exception part of the Penal Code.[9]

3. Rescue operations

64. According to information provided by the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, in 2014, six integrated operations to rescue victims of trafficking were conducted jointly by police, customs, maritime enforcement, immigration and labour officers, in addition to individual operations by those enforcement agencies. Raids, particularly in the entertainment/sex industry, were the main means of identifying victims.

65. The Special Rapporteur notes with concern that such operations often do not fully respect victims' human rights as victims and points out that the limited information offered to them, often not translated into the victim's language, does not take into account why they have been apprehended or what their rights are at the time of the raid and in subsequent interviews and during detention. Physical and emotional abuses by law enforcement officers were also mentioned during the interviews. Moreover, images and photographs of such victims regularly feature in the media, in spite of the guarantees of privacy envisaged under the Anti-Trafficking Act.

[9] See, for example, section 94 of the Penal Code which provides general exceptions for acts to which a person is compelled by threats to commit.

F. Investigation, prosecution and punishment

66. Investigation for offences under the Anti-Trafficking Act (sect. 28) is conducted by enforcement officers, who include police, immigration, customs and maritime officers, with the power to arrest, conduct search and seizure, and examine persons. Considered as enforcement officers, labour inspectors are also empowered to identify and respond to trafficking for forced labour. A standard operating procedure for enforcement officers (see para. 49 above) guides the methods of accomplishing tasks and establishes general performance standards, including in the area of investigation, raid, arrest, rescue and networking/coordination among enforcement agencies.

67. A number of factors hamper the effective and swift investigation of trafficking cases. These include limited coordination among enforcement agencies and the lack of skills to handle cases of trafficking, as well as corruption. Moreover, it has been brought to the Special Rapporteur's attention that, on several occasions, credible requests to further investigate cases of trafficking of children for begging in well-known hotspots have remained unheeded.

68. A corollary of this is the low rate of prosecution. The Attorney General's office reported that 38 cases of trafficking were prosecuted in 2014: interestingly, the majority of cases (26 cases) were for forced labour exploitation, while 12 were for sexual exploitation. However only three convictions were secured in those cases of labour exploitation, two ended in acquittals, one case was thrown out and the rest were still pending trial. The Special Rapporteur was also informed of penalties against an employer who had confiscated the passports of 29 victims of trafficking and who was fined RM 5,000.

69. The Special Rapporteur acknowledges the positive measures taken to prosecute cases of human trafficking. These include the appointment of 28 deputy public prosecutors within the Attorney General's Chambers who are specialized in trafficking; the issuance of a directive to investigate all cases involving foreign nationals under the Anti-Trafficking Act, except where the offences committed fall within ordinary criminal law; the issuance of another directive for the referral of all cases of trafficking investigated to the Attorney General's Chambers before instituting prosecution and offering the possibility of converting charges made against perpetrators under the Penal Code and Immigration Act to charges under the Anti-Trafficking Act; and the introduction of a coding system for registering cases of trafficking to ensure proceedings take priority in court. A standard operating procedure for prosecution launched in 2013 aims to standardize and create a uniform approach to dealing with cases of trafficking.

70. The authorities cited the reluctance of victims to cooperate with law enforcement authorities as one of the main reasons for low prosecution rates. While noting that assistance to victims should be provided irrespective of their collaboration with authorities, as provided in the Anti-Trafficking Act and the Trafficking in Persons Protocol, the Special Rapporteur wishes to highlight that short reflection periods (three months for foreigners), lengthy human trafficking trials, limited legal assistance and information on the case, confinement in shelters, the inability of victims to work while in confinement, fear of reprisal when reporting traffickers and deportation are factors that further discourage victims of trafficking from identifying themselves as such and collaborating with the enforcement authorities.

71. Furthermore, in spite of ad hoc training on the Anti-Trafficking Act, prosecutors and judicial officers were not sufficiently familiar with this law. Lack of clarity of what constitutes trafficking for forced labour and what are other labour crimes also emerged as a concern affecting the investigation and adjudication of such cases.

G. Redress

72. Compensation and restitution are an integral part of effective remedies for victims of trafficking under international law and standards.[10] In Malaysia, neither compensation nor a national compensation scheme for victims of trafficking is envisaged under the Anti-Trafficking Act. Nevertheless, victims of trafficking may file separate civil and criminal claims for compensation, although information on cases in which victims were awarded such compensations was not available (see Criminal Procedure Code, sect. 426).

73. Another important means of redress, specifically for victims of labour trafficking, is the recovery of unpaid wages. While not envisaged under the Anti-Trafficking Act, victims may nevertheless raise claims against their employers through either of two administrative processes, one before the Labour Department for claims concerning wages or any other payments in cash due to them (wrongful deductions, unpaid wages or unpaid compensation in the event of workplace injuries) and the other through the Industrial Relations Department for unfair dismissal (see Employment Act (1955), sect. 69, and Industrial Relations Act (1967)).

74. In certain circumstances, the Special Rapporteur is of the view that permanent or temporary residence in itself may be a necessary and appropriate form of remedy. This consideration is particularly pertinent in the case of Malaysia, where trafficked persons returned to their country of origin can be at serious risk of being re-trafficked or of severe violations of their human rights. In this regard, she acknowledges the recent steps taken by the Government to allow victims of labour trafficking to remain and work legally in Malaysia (see para. 77 below).

75. Besides operating on the assumption that victims are aware of their rights and systematically benefit from legal assistance, the above-mentioned redress mechanisms require victims to take additional steps and incur costs for lengthy trials. Moreover, tying restitution to the successful conviction of perpetrators in civil and criminal proceedings makes restitution contingent upon victims' cooperation in judicial processes. This prevents those victims who are reluctant to file complaints against their traffickers, and those whose cases were unsuccessful in court, from obtaining restitution and compensation. There are also concerns that cases resulting in the awarding of compensation are limited to cases of labour exploitation in sectors other than the entertainment/sex industry. Moreover, there is a risk of victims of labour trafficking who file cases against their employers being deported as a result of the cancellation of their work permits by those employers. Finally, the capacity of practitioners to correctly distinguish between cases of labour trafficking and other labour disputes also affects the type of redress awarded to victims. In the face of these obstacles, many victims opt to give up their rights to pursue claims, even if their cases are compelling.[11]

H. Repatriation and reintegration

76. Under the Anti-Trafficking Act, the fate of all victims of trafficking, whether identified or not, is their immediate removal from Malaysia (see Anti-Trafficking Act, sects. 51 and 54, and Immigration Act, sects. 8 and 32). However, it is not clear what the

[10] Trafficking in Persons Protocol art.6 (6) and the principles and guidelines on human rights and human trafficking, guideline 9.

[11] Amnesty International, *Trapped: The Exploitation of Migrant Workers in Malaysia* (2010), pp. 67–69.

procedures of return are and what safeguards are in place to ensure their safety and avoid their re-victimization.

77. In January 2012, victims of trafficking were allowed to take up employment in the country after completion of their stay in shelters. Subsequently, the first group of 33 victims, composed of Bangladeshi and Indians, took up employment offers. In March 2014, a government policy amending the Anti-Trafficking Act provided victims of labour trafficking who do not require further care and protection with the possibility of working before their protection order runs out. Upon fulfilment of some conditions/requirements, victims involved mainly in cases related to wages dispute can obtain special immigration passes renewable on a monthly basis. These passes cost RM 100, are only renewable for up to three months and do not grant the right to work. Upon securing new employment, the victims are issued with temporary employment work passes. Those who are unable to secure new employment within the stipulated period will be sent back to their countries.[12] At the time of visit of the Special Rapporteur, eight female victims of trafficking had been allowed to remain and work in Malaysia as domestic workers and as workers in an international hotel through this programme.

78. While these are encouraging initiatives, the Government's policy may be applicable to only a very limited number of victims of trafficking. Having valid travel documents for entry into Malaysia, a valid contract of employment and the financial means to pay the monthly fees for the special passes are prerequisites for victims to be considered under this programme. They also depend on the approval of the Ministry of Home Affairs, embassies and employers' approval for time off to enable victims to participate in legal procedures. Finally, the scope of this policy restricts its application to victims of trafficking for the purpose of labour exploitation only and does not address other types of exploitation, contrary to both the Anti-Trafficking Act and the Trafficking in Persons Protocol.

I. Prevention

1. Public awareness

79. The Government has taken a number of measures aimed at preventing trafficking in persons, primarily in the form of awareness-raising campaigns and publications. In 2014, it launched 5,126 campaigns[13] through media such as radio, television and publications to raise public awareness about trafficking issues, and distributed information about trafficking in Bahasa Malaysia, Mandarin, Tamil and other languages. NGOs and the National Human Rights Institution contribute to the dissemination of information. Yet, despite the increased attention devoted to the issue, some stakeholders have expressed concern about the difficulty of ensuring that these awareness-raising efforts appropriately target trafficked persons, those at risk of being trafficked or otherwise exploited, their employers or employment agencies.

80. While the Special Rapporteur acknowledges these efforts, she underscores the importance of addressing demand as a prevention strategy, which, in the context of Malaysia, includes demand for exploitative labour and sex. With regard to the demand for exploitative labour of migrant workers, including domestic workers, the Special Rapporteur stresses that the protection of labour rights is essential in reducing demand and in preventing exploitation from occurring in the first place. The regulation, licensing and

[12] See Chairman of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, media statement entitled "Permission to Work for Labour Trafficking Victims", delivered on 5 March 2014.

[13] See Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Progress report 2014/2015", p. iii.

monitoring of recruitment and employment agencies has yet to be effective in preventing exploitation of migrant workers. There is also a critical need to raise the awareness of employers and employment agencies about the labour rights of all workers under international human rights law and standards in order to avoid trafficking.

2. Safe migration

81. Current immigration practices focus on criminalizing rather than protecting the migrant labour force, which includes victims of trafficking, refugees and asylum seekers, who lack formal recognition in Malaysia.

82. In this regard, she wishes to reiterate that more opportunities for safe migration, i.e., legal, gainful and non-exploitative, are needed if Malaysia is to effectively address the demand for exploitable labour and fulfil its obligations to respect, protect and promote the labour rights of all workers, including migrants.

3. Public-private partnerships

83. Globally, the prevention of trafficking through public-private partnerships is gaining ground. Through self-regulatory mechanisms such as corporate social responsibility, businesses have taken steps to, inter alia, try to remove from their supply chains trafficked labour.

84. In Malaysia, the Special Rapporteur was pleased to learn about the recent initiatives of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants to engage with the electronic, airline and plantation industries. In this regard, she notes that dialogue and training sessions related to forced labour were provided to four companies within the electronic industry sectors in Shah Alam, Penang and Johor Bahru; collaboration with AirAsia Foundation to implement an AirAsia anti-human trafficking programme was initiated; and dialogues were held with several palm oil associations and the National Union of Plantation Workers.[14] She was also encouraged by the recent initiative whereby an international hotel in Kuala Lumpur provided work opportunities for 4 victims of trafficking.[15] These initiatives are indeed encouraging, although they remain an exception. Preventing trafficking for the purposes of labour exploitation and other exploitation being used in national, international and multinational businesses should be the aspiration of all ethical business in Malaysia.

J. Cooperation and partnership

1. Cooperation with civil society

85. The contribution of and collaboration with CSOs are crucial in the fight against human trafficking. The National Plan of Action 2010–2015 aspires, inter alia, to establish close engagement and interaction with those CSOs with relevant knowledge and skills in the areas of policy, prevention, protection, rehabilitation and prosecution. However, in practice, only a very limited number of CSOs (five) take part in the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants and somewhat contribute to its anti-trafficking work, particularly in the provision of assistance to victims. The need has emerged for immediate steps to be taken to establish the necessary legal framework and

[14] Information provided by the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants during the visit of the Special Rapporteur.

[15] See Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, "Progress report 2014/2015", p. iv and viii.

support to enable a larger pool of potential service providers and CSOs to, among other assistance, provide protection and assistance to victims, including by running shelters, providing counselling and training victims.

2. International, regional and bilateral cooperation

86. Malaysia has concluded a number of memorandums of understanding on security and combating transnational organized crime with Australia, Bangladesh, Canada, China, Saudi Arabia, the United Kingdom and the United States of America. Malaysia also benefits from cooperation with the United Nations, international and regional organizations in areas such as training, assistance to victims of trafficking, repatriation and awareness-raising.

87. At the regional level, Malaysia spearheaded and ratified the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries. As the current chair of ASEAN, it is working towards the development of a ASEAN convention on trafficking in persons and a regional plan of action to combat trafficking in persons. Malaysia continues to support the Bali process and is also part of the ASEAN Association of Heads of Police, an arrangement for informal cooperation on law enforcement efforts that could also potentially focus on trafficking in persons.

III. Conclusions and recommendations

A. Conclusions

88. **The Special Rapporteur recognizes the efforts of Malaysia to fight trafficking in persons, as reflected in the promulgation and amendment of the Anti-Trafficking Act and the multidisciplinary approach to anti-trafficking measures, which involves key government agencies and some CSOs. Malaysia has also promoted bilateral and regional cooperation with other countries in the region.**

89. **It is difficult to determine the trends and scope of trafficking in Malaysia in the absence of a comprehensive assessment. Consequently, the State's main focus is on combating the sexual exploitation of women and girls, with little attention paid to trafficking for labour exploitation. The restrictive immigration policy focused on rapid deportation of irregular migrants does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. There is a gap in its capacity to quickly and accurately identify victims of trafficking which is further exacerbated by the prevalence of corruption of some enforcement officials. The rate of prosecution of trafficking cases also remains very low, which perpetuates the impunity of traffickers and obstructs victims' access to justice.**

90. **The Special Rapporteur has serious concerns that the stay of victims of trafficking in shelters may amount to detention. In addition to infringing fundamental human rights relating to freedom of movement and protection from detention,[16] this presents a risk to their well-being. Staff in the shelters, despite being committed and dedicated, require specialized training and capacity-building. While acknowledging the Government's efforts to raise awareness, the Special Rapporteur notes that prevention is still at an early stage.**

[16] See OHCHR, Human Rights and Human Trafficking Fact Sheet No. 36, pp. 18–19, and report of the Working Group on Arbitrary Detention (A/HRC/22/44), paras. 55 and 57.

B. Recommendations

91. **On the basis of the above findings, and in the spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to Malaysia:**

(a) **Ratify without delay the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families;**

(b) **Ratify, without delay, ILO Domestic Workers Convention, 2011 (No. 189); the ILO Protocol of 2014 to the Forced Labour Convention, 1930 and ILO Abolition of Forced Labour Convention, 1957 (No. 105);**

(c) **Ratify, without delay, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto;**

(d) **Establish, with countries of origin, transit and of destination, bilateral and multilateral agreements for the exchange of information, mutual legal assistance and safe returns in order to jointly tackle the root causes of trafficking in persons in the region and implement existing agreements focusing on the human rights of trafficked victims.**

92. **With respect to the national framework, she recommends that the Government:**

(a) **Fast-track the amendment of the Anti-Trafficking in Persons and Anti–Smuggling of Migrants Act and other relevant policies in compliance with the requirements of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Inter alia, the amendment should focus on human rights and victims and provide victims in shelters with freedom of movement, a legal stay in Malaysia and employment while awaiting the outcome of their legal proceedings and beyond; non-criminalization of victims for all crimes committed in relation with their status as victims; compensation of victims; and the granting to NGOs of the status of protection officer to further contribute to the anti-trafficking work;**

(b) **Recognize the need for a foreign workforce and develop and review existing safe migration pathways, acknowledging that the current approach to migration management, especially the recruitment of foreign labour via unscrupulous employment agencies, may favour human trafficking;**

(c) **Amend the Employment Act in order to provide greater protection for migrant workers, including domestic workers, in accordance with international legal standards;**

(d) **Revise regulation of employment agencies and implement it stringently, and regularly monitor the activities of those agencies already licensed and take immediate action to revoke their licence and prosecute them where illegal activity involving trafficking in persons has taken place;**

(e) **Ensure that the ongoing revision of the Child Act (2001) provides further protection for children victims of trafficking;**

(f) **Evaluate the outcomes and lessons learned of the National Plan of Action to Combat Trafficking and Migrant Smuggling 2010–2015; finalize and rapidly adopt, after concerting with all stakeholders, a national plan of action for 2015–2020 taking a human rights and victim-centred approach and setting out clear objectives, responsibilities and indicators to measure progress, and allocate a dedicated budget for its implementation;**

(g) Carry out a national baseline study in collaboration with independent research institutes, bilateral partners and civil society to document the scope and trends of trafficking at the national level;

(h) Establish a systematized and harmonized data collection system on the phenomenon of human trafficking. Data on victims of trafficking should include their countries of origin and be disaggregated by, inter alia, sex, age and the nature and type of trafficking involved; the system should also include information on traffickers and data on investigations, prosecution rates and sentencing.

93. With regards to identification, training and capacity-building, she recommends that the Government:

(a) Specifically outline and harmonize identification protocols to combat trafficking in persons, developing a range of red flags and indicators to be used when screening vulnerable persons, including undocumented migrants, refugees, asylum seekers and stateless persons;

(b) Ensure that victims of trafficking can be identified, even when they are in immigration detention centres and avoid their repatriation and re-victimization;

(c) Provide legal clarity on the elements of trafficking and raise awareness of the distinction between cases of trafficking and other situations, including irregular migration, labour disputes and prostitution to facilitate accurate identification of victims by front-line officers;

(d) Continue providing comprehensive training programmes on trafficking in persons to enhance the knowledge and awareness of human trafficking of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers/businesses, employment agencies, CSOs and the media;

(e) Train all service providers (protection officers) involved in the assistance and care of victims of trafficking.

94. With respect to support service for victims of trafficking, she recommends that the Government:

(a) Protect and assist all victims of trafficking, including child victims, victims of labour trafficking and domestic servitude with full respect for their human rights, and integrate a human rights-based approach in the investigation of trafficking cases;

(b) Make provision for unconditional and appropriate assistance, including social, psychological, medical and legal support, as well as translation assistance and interpretation services, in accordance with article 6 (6) of the Trafficking in Persons Protocol in shelters. Ensure victims inside shelters have freedom of movement, access to employment and legal stay in the country;

(c) Amend the existing legal framework to enable adequately funded service providers and organizations working on trafficking in persons to provide comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services, for victims of trafficking;

(d) Provide victims of trafficking who do not wish to return to their countries owing to fear of retribution, hardship or re-trafficking viable alternatives to remain and work legally in Malaysia, including through granting special work permits and employment visas;

(e) **Ensure that the free 24-hour hotlines are accessible in the languages that may be the only ones that potential victims speak and are serviced by multilingual staff who have received specialized training on trafficking in persons;**

(f) **Maintain close cooperation with international and regional organizations, particularly the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees as well as diplomatic missions for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, for international protection of the victims and the application of the principle of non-refoulement;**

(g) **Establish a fund that will provide for a comprehensive national compensation scheme for victims of trafficking;**

(h) **Ensure that appropriate procedures are in place to evaluate the best interests of the child during the stage of identification, protection and assistance and before making any decision on the eventual repatriation of the child.**

95. **With respect to prosecution, the Special Rapporteur recommends that the Government:**

(a) **Improve the justice delivery system to ensure speedy adjudication of cases of trafficking while guaranteeing fair-trial rights consistent with a human rights-based approach to criminal justice responses;**

(b) **Ensure that in the prosecution of cases of trafficking, victim/witness protection before, during and after the trial is duly implemented to avoid reprisal;**

(c) **Ensure that the best interest of the child is at the heart of the criminal justice response.**

96. **With respect to prevention, the Special Rapporteur recommends that the Government:**

(a) **Step up efforts to raise awareness about all forms of trafficking in persons, including for domestic servitude, forced labour and sexual exploitation, in order to promote understanding of what constitutes trafficking among the general population, the foreign community, employers and employment agencies;**

(b) **Conduct surveys to assess the impact of the awareness-raising campaigns, which should be extended to the whole country and especially to areas where there is a high concentration of persons in vulnerable positions. Moreover, the language factors must be taken into account when developing public awareness tools;**

(c) **Empower non-governmental organizations, including through increased interaction and the provision of funds, to conduct sensitization on trafficking and to handle complaints related to trafficking;**

(d) **Sensitize businesses about human trafficking and encourage them to make and maintain a supply chain free from trafficking, including through the establishment of self-regulatory mechanisms and tools.**

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro

Addendum

Second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms* **

Summary

On 21 and 22 May 2014, the former Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, in partnership with the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime, convened the second consultation to discuss ways to strengthen partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms. The present report contains the outcomes of the discussions of the experts from 26 countries in Africa, the Americas, Asia, Europe and the Middle East who shared their national, bilateral, subregional and regional experiences in prevention efforts and in the protection of and assistance to victims of trafficking, including the setting up of institutional and legislative frameworks established for those purposes at the municipal level.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

** The appendix is circulated as received.

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The report covers issues concerning the institutional frameworks of the mandate of national rapporteurs and equivalent mechanisms and explores ways to further enhance collaboration between those national anti-trafficking institutions and their counterparts at the regional, subregional and international levels. It also focuses on the means of fostering partnership among national rapporteurs and equivalent mechanisms by addressing the challenges and dilemmas they face and sharing lessons learned. The issues of collection and analysis of information and data on trafficking in persons, and fostering cooperation between national rapporteurs and equivalent mechanisms and between State and non-State actors in destination, transit and source countries are also covered.

The participants valued the meeting as a good platform for discussing common issues, exchanging good practices and establishing contacts. They reiterated their readiness to continue to engage with each other, as well as with State and non-State actors at the regional, subregional and international levels, including with the mandate of the Special Rapporteur, with the United Nations system in general and with other relevant stakeholders.

Annex

[English only]

Report of the Special Rapporteur on trafficking in persons, especially women and children, on the second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms (Bangkok, 21–22 May 2014)

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I. Context

1. On 21 and 22 May 2014, the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo,[1] convened the second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms, in partnership with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crime (UNODC). The meeting, which took place in Bangkok, aimed to provide an opportunity to continue sharing experiences and lessons learned among national rapporteurs on trafficking in persons and equivalent mechanisms, and to strengthen further the partnership between her mandate and those mechanisms.

2. The global consultation brought together 46 participants, including national rapporteurs and representatives of equivalent mechanisms from 26 countries in different regions of the world, and representatives of relevant United Nations, international and regional organizations.

3. The setting up and strengthening of national coordinating mechanisms as a means of effectively addressing trafficking in persons has been the subject of much international attention. In the United Nations Global Plan of Action to Combat Trafficking in Persons, States Members encourage effective cooperation and coordination of efforts at the national, bilateral, subregional, regional and international levels, and through the networks provided by relevant organizations to share best practices in capacity-building for responding to and combating trafficking in persons.[2] In several of its resolutions, the General Assembly has encouraged States to consider setting up or strengthening national coordinating mechanisms, such as a national rapporteur or an inter-agency body, to encourage the exchange of information and to report on data, root causes, factors and trends in violence against women, in particular trafficking.[3] In its resolution 68/192, the General Assembly invited the Commission on Crime Prevention and Criminal Justice and the Working Group on Trafficking in Persons, pursuant to the United Nations Convention against Transnational Organized Crime, to consider the need for meetings of representatives of national coordinating mechanisms on combating trafficking in persons, with a view to facilitating, inter alia, better international coordination and information exchange on good practices to address the problem of trafficking in persons. Likewise, in accordance with the Recommended Principles and Guidelines on Human Rights and Human Trafficking, contained in the report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (E/2002/68/Add.1), States and, where applicable, intergovernmental and non-governmental organizations, should consider establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions.[4]

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[1] The present report is submitted by Ms. Giammarinaro, who took up her functions in July 2014, after the second consultation with national rapporteurs on trafficking in persons and equivalent mechanisms had taken place in May 2014. All references to the Special Rapporteur in the present report are therefore to Ms. Ezeilo.

[2] General Assembly resolution 64/293, annex, para. 51.

[3] See, for example, General Assembly resolutions 59/166, 61/144 and 63/156 on trafficking in women and girls.

[4] In accordance with article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), States are required to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in

4. At the regional level, the Council of Europe Convention on Action against Trafficking in Human Beings encourages States parties to consider appointing national rapporteurs or other mechanisms to monitor the anti-trafficking activities of State institutions and the implementation of national legislation (art. 29). The scope and mandate of those mechanisms is clearly defined in directive 2011/36/EU of 5 April 2011 of the European Parliament and of the Council of the European Union on preventing and combating trafficking in human beings and protecting its victims.

5. The mandate of the Special Rapporteur, set out in Human Rights Council resolution 8/12, includes identifying and sharing best practices, proposing adequate responses to challenges and obstacles in order to uphold and protect the human rights of victims of trafficking, identifying gaps in protection, and emphasizing practical solutions, including through international cooperation, with a view to protecting the human rights of actual or potential victims of trafficking. Based on her research and her ensuing report to the Human Rights Council at its tenth session, the Special Rapporteur recommended that States should consider the appointment of a national rapporteur who would liaise with the Special Rapporteur to gather, exchange and process information on trafficking in persons, and monitor and evaluate anti-trafficking action (A/HRC/10/16, p. 27). The analysis and data provided by national rapporteurs and equivalent mechanisms can be instrumental in measuring the effectiveness of the steps taken to prevent human trafficking, prosecute alleged perpetrators and protect victims.

6. The Special Rapporteur has long maintained the need for better cooperation among countries of origin, transit and destination in order to address effectively the serious challenge to humanity posed by the phenomenon of trafficking in persons. In her report to the fourteenth session of the Human Rights Council, she recognized the key role of regional and subregional mechanisms in providing an anti-trafficking response that is both multilateral and sufficiently close to countries' realities and specificities within a certain region (A/HRC/14/32, para. 2). Furthermore, participants in a consultation on the role of regional and subregional mechanisms in international efforts to counter trafficking in persons, especially women and children, convened in Dakar in October 2010 by the Special Rapporteur, emphasized that a prerequisite to effective and wider cooperation was effective coordination at the national and regional levels through structures such as focal points, coordinators or rapporteurs. In February 2012, in the spirit of cooperation and sharing of experience, the Special Rapporteur participated in a meeting of the informal network of European Union national rapporteurs or equivalent mechanisms, organized by the European Commission and the European Union Anti-Trafficking Coordinator, at which the participants shared information on their work and activities and held discussions on the challenges of, and good practices for, implementing the existing national referral mechanisms; the advantages of having transnational referral mechanisms; and the issues of victim identification and safe return to prevent retrafficking.

7. On 23 and 24 May 2013 in Berlin, as a follow-up to the discussions and initiatives mentioned above and in the framework of her mandate, the Special Rapporteur convened the first consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms. The objective was to promote the exchange of information on trends, good practices and lessons learned from the activities of various national rapporteurs and equivalent mechanisms; consider and discuss possible ways of promoting partnerships and cooperation between national rapporteurs and equivalent mechanisms from various regions of the world; and provide an opportunity for

persons, which should, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

the 40 participants from 19 countries and representatives of relevant United Nations, international and regional organizations to meet one another and create and enhance networking opportunities between national rapporteurs and equivalent mechanisms from countries in different regions.

8. The outcome of the consultation was a set of recommendations, based on the observations and conclusions of the participants, for fostering cooperation and sharing expertise and good practice among national rapporteurs and equivalent mechanisms from different regions of the world. The recommendations are contained in the report of the Special Rapporteur on trafficking in persons, especially women and children, on the consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms (Berlin, 23–24 May 2013) (A/HRC/26/37/Add.1, annex).

II. Introduction

9. The second consultative meeting was opened by Laurent Meillan, Officer-in-Charge at the OHCHR Regional Office for South-East Asia, who welcomed the Special Rapporteur on trafficking in persons, especially women and children, and all the participants to Bangkok. Mr. Meillan congratulated the Special Rapporteur for the ground-breaking work she had undertaken during her mandate by giving voices to victims. He also underlined the fact that partnership and cooperation were among the central tenets of the Special Rapporteur's approach to combating trafficking in persons, which included advocacy for the establishment of national rapporteurs and equivalent mechanisms and regular consultations with stakeholders at the national, subregional, regional and international levels. In his welcoming remarks Sebastian Baumeister, Project Coordinator at the UNODC Regional Office in Bangkok, pointed out some of the key challenges faced in South-East Asia, such as the hidden nature of trafficking in persons, the small number of identified and supported victims, the low conviction rates and the overall insufficient awareness about the crime of human trafficking. He also noted that migrant smuggling, as a main driver of irregular migration, significantly contributed to fuelling human trafficking. He called on participants to use the consultative meeting as an opportunity to strengthen the network between national rapporteurs and equivalent mechanisms. In her remarks, Joy Ngozi Ezeilo, Special Rapporteur on trafficking in persons, especially women and children, explained the objective of the meeting and recalled that international bodies had for a long time been making a compelling call for the establishment of national rapporteurs and equivalent mechanisms to monitor the situation of human trafficking within countries, but also to evaluate the degree of implementation of existing legislation and the effectiveness of national action plans and policies, as well as strengthening the gathering and use of data and reporting on trafficking in human beings. She noted that, in exercising her mandate, she had consistently advocated for the importance of such mechanisms and emphasized that cooperation and exchange of expertise and good practices among countries would contribute to raising the effectiveness of anti-trafficking efforts.

10. The objectives and expected outcomes of the second consultative meeting were: (a) to deepen discussion on the importance and benefits of establishing and implementing the mandate of national rapporteurs and equivalent mechanisms; (b) to promote the exchange of information on current trends, good practices and lessons learned from the activities of various national rapporteurs and equivalent mechanisms carrying out similar functions, including national coordinating mechanisms; and (c) to provide a forum for developing and enhancing networking between national rapporteurs and equivalent mechanisms across countries and regions.

11. The agenda of the consultative meeting was divided into five sessions, covering different aspects of strengthening the role of national rapporteurs on trafficking in persons and equivalent mechanisms and the potential for cooperation and coordination between them and with other regional, State and non-State actors (see appendix).[5]

III. Overview of the discussions held during the consultative meeting

A. The role of national rapporteurs on trafficking in persons and equivalent mechanisms in addressing trafficking in persons: institutional framework

12. Presentations on the institutional framework were made by national rapporteurs and representatives of equivalent mechanisms from Brazil, Israel, Nepal and Nigeria. While noting the differences and similarities between such bodies, speakers and participants highlighted the following key functions and responsibilities in achieving the common goal of responding to and combating trafficking in persons.

13. Some of the key functions of national rapporteurs and equivalent mechanisms were identified as the collection of information on trafficking in persons, analysis of its root causes, nature, extent and type, and the identification of emerging trends in trafficking in persons, all with a view to contributing to the development of effective anti-trafficking policies, programmes and interventions. In Finland, the national rapporteur has identified trafficking in persons for sexual exploitation as an emerging form of trafficking which has, until recently, been underreported. In Nigeria, the National Agency for the Prohibition of Traffic in Persons and Other Related Matters is mandated to conduct research on the root causes of trafficking in persons, and in Uganda, the establishment of a national databank on cases of trafficking in persons is one of the functions of the Coordination Office to Combat Trafficking in Persons.

14. Monitoring and evaluating the impact of existing anti-trafficking legislation and policies, revising existing laws and guidelines in line with international standards, and proposing new legislation and standard operating procedures for their uniform implementation also emerged as functions of national rapporteurs and equivalent mechanisms. In Israel, the National Anti-Trafficking Coordinator contributed to the promulgation of anti-trafficking legislation at the beginning of her mandate. Representatives from Finland, the Philippines and Uganda have proposed revisions of existing laws and regulations related to various aspects of trafficking in persons. The mechanisms in India, Nigeria and Uganda have developed standard operating procedures to enable stakeholders to harmonize their anti-trafficking actions.

15. Some mechanisms are involved in the prosecution and punishment of traffickers. In Nepal, they conduct investigations and fact-finding missions and in Nigeria, they are involved in investigating and prosecuting traffickers.

16. With regard to redress, recovery and reintegration of victims of trafficking in persons, several national rapporteurs and equivalent mechanisms have proposed the establishment of relevant institutions, including shelters for male and female victims of trafficking in Israel and a one-stop victims' assistance centre in the Philippines. The

[5] The agenda of the meeting is also available from www.ohchr.org/EN/Issues/Trafficking/Pages/2ndConsultativeMeeting2014.aspx.

mechanism in Uganda has been considering turning the Coordination Office into a one-stop operational agency for all counter-human trafficking activities in order to improve the protection of victims and enhance preventive strategies. The mechanism in the United Arab Emirates works closely with shelters where victims of trafficking in persons, especially women and children, stay. It also supports a newly established shelter for male victims of trafficking in persons.

17. Cooperation and coordination among all stakeholders within a country, as well as capacity-building among concerned stakeholders and raising public awareness, were identified as other key tasks of national rapporteurs and equivalent mechanisms. In Finland and Nepal, that includes periodic reporting on trafficking in persons to Parliament and Government, which also serves to raise awareness among officials. In Latvia, those tasks are achieved by sharing best practices among stakeholders.

18. Some national rapporteurs and equivalent mechanisms are involved in the promotion of cooperation and partnership at the bilateral, subregional, regional and international levels. In Nigeria, the National Agency for the Prohibition of Traffic in Persons and Other Related Matters cooperates and assists national rapporteurs and equivalent mechanisms in West Africa and other parts of the world and reinforces anti-trafficking measures in bilateral and multilateral agreements. The mechanism in Nepal has proposed a memorandum of understanding with Malaysia and Qatar on the protection of the rights of migrants.

19. With regard to the type of national coordinating mechanism that could best address trafficking in persons, a variety of models of national rapporteurs and equivalent mechanisms emerged, namely inter-agency coordinating structures, stand-alone institutions, offices within government institutions and institutions that are integrated into a broad-based human rights institution. The possible advantages and disadvantages of each coordinating mechanism were discussed on the basis of factors such as the size of the country, its geographical location, the extent of the problem and the availability of resources.

20. Besides serving as a platform for concerned Governments and non-governmental actors involved in the fight against trafficking in persons, the main benefit of an inter-agency coordinating structure is the maximized utilization of existing human, financial and material resources to address the multifaceted phenomenon of trafficking in persons through a multi-stakeholder response. Given their nature and the importance of networking, coordinating mechanisms can act as peer support groups and provide forums for sharing experiences and ideas and discussing areas of common concern and joint strategies, as well as offering visibility and fostering collaboration and compliance with international standards. The government institutions most involved in combating trafficking in persons, such as the Ministry of Justice in Brazil, the Ministries of Foreign Affairs in Bahrain and the United Arab Emirates, the Ministries of the Interior in Latvia and Uganda and the Ministry for Public Welfare in Indonesia, head those inter-agency structures. Often, the choice of ministry as the lead institution can affect how trafficking in persons is predominantly approached at the national level, for instance as a law enforcement or a migration issue. With regard to challenges, the experience of some countries revealed that coordination among the various members was often poor, and the individual entities often had to deal with competing priorities in their parent institutions. Moreover, it was noted that the funding allocated for the work of the inter-agency mechanism was found to be irregular and insufficient.

21. Some countries have established national stand-alone institutions to address the problem of trafficking in persons within the country. The National Agency for the Prohibition of Traffic in Persons and Other Related Matters in Nigeria is one such institution, with a board, an executive secretary and eight departments headed by directors. It has a clear mandate to focus national efforts to combat the phenomenon in close

collaboration with government and non-governmental agencies within the country, and at the regional and international levels. The likelihood that the mandate will remain relatively restricted to the protection of only the most vulnerable and excluded groups, at the expense of a comprehensive approach, was identified as the risk of stand-alone institutions.

22. Another type of national rapporteur or equivalent mechanism is a department or office within a government institution charged with combating trafficking in persons. One example is the Office of the National Anti-Trafficking Coordinator in Israel, which was established under the Ministry of Justice and is tasked with promoting cooperation among all relevant government authorities. The Office also serves as a bridge between government authorities and non-governmental organizations, as well as facilitating cooperation with relevant international bodies. One advantage of such an institution is the relative flexibility it has to adapt its responses to changing trends in trafficking, although coordination among stakeholders could be a challenge.

23. The benefits of a mechanism to address trafficking in persons that is independent from the Government were particularly noted by participants from Nepal, where the Office of the Special Rapporteur on Trafficking in Women and Children is part of the National Human Rights Commission, and from Finland, where the Ombudsman for Minorities is appointed as a National Rapporteur. The main strength of that arrangement is the ability to build on the interdependence and indivisibility of all human rights and mainstream the issue across all anti-trafficking areas. Given the autonomous nature of such mechanisms, their staff can objectively evaluate the implementation of anti-human trafficking legislation, strategies and activities, point out existing drawbacks and make comprehensive legal and policy recommendations. Their autonomy also increases the credibility of their actions, which include handling complaints regarding trafficking in persons. The Office of the Special Rapporteur on Trafficking in Women and Children in Nepal is mandated to carry out investigations and monitor site visits. In Finland, the National Rapporteur provides legal advice and may also assist victims of human trafficking in securing their rights. The National Rapporteur enjoys independent collaboration with the Government, civil society organizations (CSOs) and victims, based on trust. However, in order to ensure a unified approach in that set-up, there is a need for willingness and incentives to undertake cross-disciplinary work in collaboration with stakeholders.

24. The representatives of national rapporteurs and equivalent mechanisms from Latvia, the Philippines, Uganda and the United Arab Emirates highlighted the fact that, for the most part, those institutions were created, their objectives defined and their powers and responsibilities conferred through legislation (acts of parliament, government resolutions or ministerial decrees), national action plans and other adopted measures and high-level governmental expressions of policy. Besides being an indication of the country's commitment to fighting trafficking in persons, those instruments provided legitimate grounds for an institutionalized response and the work of national rapporteurs on trafficking in persons and equivalent mechanisms, and allowed them access to information. They also formed the basis for cooperation with relevant stakeholders at the national, regional and international levels. The relative ease or difficulty of amending the provisions of those frameworks in order to adapt to the changing anti-trafficking work of the national rapporteurs and equivalent mechanisms was also noted.

25. In addition, a number of challenges and dilemmas were identified by national rapporteurs and equivalent mechanisms in the course of their work. The lack of systematic collection, exchange and analysis of information and coordination between relevant government institutions, the judiciary, law enforcement agencies and service providers were some of the challenges shared by presenters and participants. In Brazil, that resulted in non-uniform implementation of existing anti-trafficking policies and legislation within the regions of the country. The mechanisms from Bahrain, Indonesia and the Philippines found

the collection and management of standardized or homogenous information and data by all stakeholders challenging. In countries where trafficking in persons for the purpose of labour exploitation was a reality, such as the United Arab Emirates, collaboration with the private sector to address the phenomenon jointly had proven challenging. The representatives of Nigeria and Uganda had found that exchanging information and coordinating with other national rapporteurs and equivalent mechanisms in source, transit and destination countries was often difficult, which had a negative impact on the speedy provision of remedies to victims of trafficking in persons.

26. The rapid identification of existing and emerging forms of trafficking in persons with a view to addressing the evolving nature of trafficking in persons, including acts of trafficking committed with sophisticated and new technology tools, was found to be challenging. The national rapporteurs and equivalent mechanisms in Latvia and Nigeria identified another problem: the slow legislative response when it came to promulgating and amending existing anti-trafficking laws and the gaps in legislation establishing national rapporteurs and equivalent mechanisms, compared with the rapidly changing phenomenon of trafficking. The representatives of Latvia and Uganda also highlighted the inadequate implementation of existing laws owing to a lack of awareness and capacity among the relevant staff of the judiciary and law enforcement officers. In addition, the inadequate level of protection provided to victims of trafficking hindered them from accessing assistance. In Nigeria, the fear of reprisals by traffickers hindered victims of trafficking from benefiting from such assistance. The absence of referral mechanisms for victims of trafficking was also a challenge noted by the representative of Latvia.

27. Another concern faced by national rapporteurs and equivalent mechanisms relates to human resources. That includes high staff turnover in Indonesia and delays in replacing key staff, such as in Nepal, where the position of Special Rapporteur on Trafficking in Women and Children has been vacant since 2012. The representatives of Brazil, Nigeria and Uganda also mentioned different levels of commitment and, at times, the limited awareness of trafficking in persons among staff. The staff of the Ugandan Coordination Office to Combat Trafficking in Persons had found that the lack of control over members of the task force who were scattered in different ministries and their heavy workloads within their parent government institutions left them with limited time to dedicate to their anti-trafficking responsibilities. Financial constraints were also highlighted as a challenge that affected the work of the national rapporteurs and equivalent mechanisms. The size and cultural diversity of some countries were also identified as challenges by national rapporteurs and equivalent mechanisms, as their limited resources did not enable them to be physically present in all areas of the country and to adapt their anti-trafficking efforts to all forms of trafficking and all victims.

28. In spite of those challenges, national rapporteurs and equivalent mechanisms have been able to make concrete contributions to anti-trafficking efforts, including in the proposal, development, implementation and monitoring of national anti-trafficking legislation, policies and mechanisms in cooperation with government and CSO stakeholders. Participants highlighted the need for a human rights-based and victim-centred approach and cautioned that the fight against trafficking in persons should not encroach on safe migration routes used by people in search of better living conditions. The representative of Brazil mentioned that victims of trafficking for the purpose of labour exploitation were allowed to stay in the country for up to one year, even if they did not cooperate with the authorities. Thereafter, they could apply for permanent residence. In Malaysia, victims of trafficking for the purpose of labour exploitation who did not require care and protection were allowed to work legally in the country. Some national rapporteurs and equivalent mechanisms had been able to identify new trends and forms of trafficking in persons and had adapted their responses accordingly (see para. 13 above). The mechanisms in Israel, Morocco and Uganda had played a role in proposing new anti-trafficking

legislation, while the mechanisms in Nigeria and the Philippines were working towards the amendment of existing laws in order to address gaps, in line with the rapidly changing phenomenon of trafficking in persons. The mechanisms in Israel and the Philippines had been instrumental in putting in place or strengthening anti-trafficking task forces. In Nigeria, a trust fund for victims of trafficking in persons had been set up, financed from the sale of confiscated assets of convicted traffickers, and a national referral mechanism had been developed. The mechanisms in the Philippines and Uganda were exploring the possibility of setting up one-stop victim assistance centres.

29. Generally, all national rapporteurs and equivalent mechanisms are involved in advocacy and awareness-raising activities on the problem of trafficking, targeting all stakeholders, including front line officials such as the judiciary and the police, and CSOs. Periodic reports to higher public bodies on progress in implementing national plans of action, such as those submitted by the Brazilian and Finnish mechanisms, provide an opportunity to indirectly raise awareness of political leaders and policymakers about trafficking in persons. As a result of the 2010 report to Parliament of the Finnish National Rapporteur on Trafficking in Human Beings, Parliament required the Government to take specific action to enhance victim identification, assistance and protection, and to improve pretrial investigation and prosecution processes. In Nigeria, the National Agency for the Prohibition of Traffic in Persons and Other Related Matters found that, by highlighting the negative impact of trafficking in persons on the nationwide aspiration to economic development, security and good governance, people accepted that the issue was the responsibility of both the Government and society. Since 2007, the mechanism in Cambodia has been using the commemoration of a national anti-trafficking day to raise awareness nationwide about trafficking in persons. Numerous publications and media campaigns are also used in many countries to raise awareness about trafficking in persons. In Colombia, India and Mexico, films and soap operas on the topic have been produced for cinema and television. A number of national rapporteurs and equivalent mechanisms also have websites that contain awareness-raising material and contact information that can be widely accessed.

30. The national rapporteurs and equivalent mechanisms in Nigeria and the United Arab Emirates have contributed to the processes of proposing, drafting and entering into bilateral and multilateral agreements with other countries in order to address cross-border trafficking in persons (see para. 39 below).

B. Regional and subregional frameworks supporting the work of national rapporteurs on trafficking in persons and equivalent mechanisms

31. Representatives of the Organization of American States, the Association of Southeast Asian Nations Commission on the Promotion and Protection of the Rights of Women and Children, and United Nations Action for Cooperation against Trafficking in persons made presentations on how national rapporteurs and equivalent mechanisms could be strengthened to enable them to fight trafficking effectively at the regional and subregional levels. They recognized the catalytic role of national rapporteurs and equivalent mechanisms in generating political will at the national level, which could then be translated into implementing subregional and regional anti-trafficking polices that were based on human rights and national legislation.

32. The experience of cooperation between India and the South Asian Association for Regional Cooperation (SAARC) demonstrated how a national rapporteur or equivalent mechanism could contribute to fighting trafficking in persons at the regional level. India has developed standard operating procedures for implementing the SAARC Convention on Preventing and Combating Trafficking in Women and Children, which has been ratified by

all SAARC member States. Two toll-free numbers, one for children and the other for women, have also been set up in India and can be used by the secretariat of SAARC. Moreover, in 2013, India hosted a group of SAARC member States on a study tour to learn from the experiences of the Indian Integrated Anti-Human Trafficking Units.

33. The importance of bilateral cooperation agreements between national rapporteurs and equivalent mechanisms, in addition to the regional framework, was also mentioned by participants, who noted that such cooperation constituted good practice. It allowed the authorities to really tailor anti-trafficking measures to the specific issues in both countries. The representatives from Cambodia indicated that their country had consolidated its cooperation with Malaysia beyond the framework of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), through bilateral agreements. Indonesia had also entered into bilateral cooperation with countries within the region and beyond. The representative of the mechanism from Finland highlighted the need for such cooperation, in particular between countries in which national rapporteurs and equivalent mechanisms had similar mandates and tasks.

34. The representatives of the mechanisms in Brazil and Mexico recommended that national rapporteurs and equivalent mechanisms should support anti-trafficking work at the regional level by sharing their awareness-raising materials, including soap operas and other media coverage, with the Organization of American States. They also noted that such cooperation could be an effective means of reducing the costs of producing such materials for regional mechanisms.

35. Participants also highlighted the fact that regional and subregional mechanisms were in a unique position to support the efforts and build the capacity of national rapporteurs and equivalent mechanisms so as to encourage a uniform anti-trafficking response that was both multilateral and sufficiently close to countries' realities and specificities within a certain region. Existing regional mechanisms or new structures dedicated to combating trafficking in persons within existing regional human rights mechanisms could provide technical assistance in drafting legislation, developing specific tools such as guidelines and standard operating procedures, trainings practitioners and commissioning studies, as well as monitoring and evaluating the work of national rapporteurs and equivalent mechanisms at the regional level. The representative of the Association of Southeast Asian Nations Commission on the Promotion and Protection of the Rights of Women and Children noted that gender-sensitive guidelines for dealing with victims of trafficking were currently being developed. The aim of the guidelines was to address similar problem of trafficking in persons within the region in a uniform manner. The guidelines were expected to be put into practice following a consultative meeting with all member States in September 2014. National rapporteurs and equivalent mechanisms were expected to complement that regional initiative by playing a crucial role in its implementation and ensuring that the guidelines were applied at the national level.

36. It was noted that regional and subregional mechanisms could also serve as platforms on which national rapporteurs and equivalent mechanisms could exchange information and learn from each other in order to address the dynamic nature of trafficking in persons in the region. That could be done through initiatives aimed at addressing cross-border trafficking in persons, sharing information, including good practices, tools and databases among agencies. The representative of the mechanism from Finland also noted that regional mechanisms facilitate the work of national rapporteurs and equivalent mechanisms by keeping trafficking in persons on the regional agenda and encouraging Governments to act at the national level.

37. Participants emphasized the fact that, in order to fight trafficking in persons at the regional and subregional levels, it was first necessary to strengthen coordination between the different regional and subregional bodies involved in combating trafficking in persons.

C. Fostering partnership among national rapporteurs on trafficking in persons and equivalent mechanisms: challenges, dilemmas and lessons learned

38. The representatives of Bahrain, Colombia, Finland and Indonesia identified the challenges and dilemmas faced by national rapporteurs and equivalent mechanisms in fostering partnership between themselves. The difference in the mandates and duties of national rapporteurs and equivalent mechanisms, highlighted by the Finnish representative, and the lack of information about the existence of those mechanisms and how to reach them, raised by the representatives of China and India, were identified as the main difficulties. In addition, the Indonesian representative mentioned that the ad hoc nature of some of the partnerships, and staff turnover within the offices of national rapporteurs and equivalent mechanisms affected continued coordination and partnerships with similar mechanisms in other countries.

39. In the discussions, participants considered how national rapporteurs and equivalent mechanisms could increasingly and substantially coordinate among themselves in order to complement regional and international efforts. The representative of the mechanism in Finland mentioned that bilateral cooperation between countries in which national rapporteurs and equivalent mechanisms had similar mandates and functions facilitated cooperation. The representative of the National Agency for the Prohibition of Traffic in Persons and Other Related Matters in Nigeria added that formal memorandums of understanding with sister national rapporteurs and equivalent mechanisms in source, transit and destination countries also established a framework for national rapporteurs and equivalent mechanisms to work together, including solving cases of cross-border trafficking in persons. The representative of the Indonesian mechanism highlighted the fact that capacity-building of national rapporteurs and equivalent mechanisms could facilitate exchanges of experience and information in a uniform manner.

40. The initiative of the Special Rapporteur on trafficking in persons, especially women and children, to convene annual consultative meetings for national rapporteurs and equivalent mechanisms was also seen as another good practice that would bolster contact and coordination among those mechanisms and complement national, regional and international anti-trafficking efforts. Participants called on the Special Rapporteur to continue providing a forum for networking between national rapporteurs and equivalent mechanisms by convening periodic consultative meetings on specific themes. The representative of the mechanism from Morocco proposed that the issue of trafficking should be on the agenda of the International Conference of National Human Rights Institutions, just as the issue of migration had been discussed at the Eighth International Conference of National Human Rights Institutions, held in 2006. The representative of Malaysia proposed that a forum for joint events between national human rights institutions and national rapporteurs on trafficking in persons and equivalent mechanisms could contribute to addressing the issue from different angles. In addition to existing websites with lists of national rapporteurs and equivalent mechanisms, the establishment of a network of participants in the first and second consultative meetings for national rapporteurs and equivalent mechanisms convened by the Special Rapporteur, with a mailing list, was proposed as an initial means of ensuring that the anti-trafficking mechanisms could maintain contact, exchange information and coordinate their work.

D. Fostering cooperation between national rapporteurs and equivalent mechanisms and State and non-State actors in destination, transit and source countries

41. The question of how national rapporteurs and equivalent mechanisms could cooperate with State actors in destination, transit and source countries, while retaining independence and impartiality, was addressed in the presentations of the representatives of India, Malaysia, Mexico, Morocco and Romania. While memorandums of understanding with other countries were identified as the most common form of cooperation, the representative of India stated that India cooperated with Bangladesh, Bhutan and Nepal on the basis of standard operating procedures to ensure coordination in the repatriation of victims of trafficking in persons, and mentioned that Bangladesh and India had set up a joint task force to fight trafficking in persons.

42. The role of national rapporteurs and equivalent mechanisms in strengthening cooperation with non-State actors was also discussed. It was noted that non-State actors should include not only CSOs, but also victims of trafficking in persons, business, medical and faith-based communities. The representatives of Bahrain and Brazil mentioned the benefits of involving religious leaders, who could authoritatively influence a large portion of the population, in the fight against trafficking. The representative of Israel said that an effective way to engage the business community in the fight against trafficking in persons was to emphasize the negative impact of trafficking on the profits that businesses had to make. In Mexico, the Ministry of the Economy was part of the intersectoral committee that constituted the equivalent mechanism there; it had established a compliance code for the tourism sector and was involving that sector in its campaign against child trafficking. In the Philippines, the tourism sector in one area of the country had taken the initiative of declaring zero tolerance for trafficking in persons and was reporting any cases that it identified to the relevant authorities. The Special Rapporteur informed participants about her work with business enterprises and medical professionals in the preparation of her reports on the issue of trafficking in persons in supply chains (A/67/261), benchmarks and indicators for ensuring trafficking-free supply chains (A/HRC/23/48/Add.4, appendix I), and her thematic analysis of trafficking in persons for the purpose of organ removal (A/68/256).

43. The value of collaborating with CSOs who were close to the affected groups and individuals by involving them in national plans of action and other activities and by supporting their work was also recognized by all. Building the capacities of CSOs and providing resources to enable them to conduct their anti-trafficking work, including by sharing tools for the collection of information and the monitoring and evaluation of anti-trafficking work in a uniform manner, was deemed important. In terms of challenges, the representative of Israel mentioned the reluctance of some CSOs to benefit from government funding to conduct their work, while the representative of Indonesia noted the limited resources and capacities of some CSOs, which resulted in delays in the provision of regular reports to the local and national anti-trafficking task forces of which they were a part.

E. Way forward: recommendations on strengthening partnership among national rapporteurs and equivalent mechanisms

44. **The usefulness and importance of such consultative meetings as a forum for networking, fostering partnership, exchanging information and good practices in combating trafficking in persons between national rapporteurs and equivalent mechanisms was appreciated by participants. The existing political will to continue and to enhance cooperation between national rapporteurs and equivalent mechanisms**

and their regional and international mechanisms was also noted. The discussions and exchanges during the consultative meeting resulted in the following recommendations.

45. In order to strengthen the institutional framework of national rapporteurs and equivalent mechanisms in addressing trafficking in persons:

(a) There is a need to build the capacities of and allocate adequate resources to national rapporteurs and equivalent mechanisms with a view to facilitating, inter alia, independent and effective collection of data, exchange of information and coordination to address the problem of trafficking in persons. National rapporteurs and equivalent mechanisms should also track progress in the fight against trafficking in persons through monitoring, evaluating and widely disseminating information on the impact of anti-trafficking laws, policies, programmes and interventions;

(b) National rapporteurs and equivalent mechanisms should be able to update anti-trafficking responses in order to ensure that they are capable of reacting to the changing nature of trafficking in persons, in collaboration with stakeholders;

(c) In order to better understand the roles of national rapporteurs and equivalent mechanisms, a global baseline study should be commissioned on lessons learned from national rapporteurs and equivalent mechanisms and examining trends and providing guidance in relation to those mechanisms.

46. In order to enhance collaboration between regional and subregional frameworks and national rapporteurs and equivalent mechanisms:

(a) Taking into consideration the specificities of each national rapporteur and equivalent mechanism, regional and subregional mechanisms should consider developing specific anti-trafficking tools such as guidelines, standard operating procedures, training modules for use by national rapporteurs and equivalent mechanisms to build their capacities and encourage a uniform approach within the region or subregion. Regional and subregional mechanisms could build on the experience of national rapporteurs and equivalent mechanisms, including by disseminating training and awareness-raising materials that are already available within the region and subregion;

(b) The setting up of anti-trafficking monitoring mechanisms within regional and subregional human rights systems should be considered. When such structures already exist, coordination among the various regional bodies that are involved in anti-trafficking work should be strengthened;

(c) The establishment of a regional network of national rapporteurs and equivalent mechanisms should be considered in order to address the issues involved in trafficking in persons in a uniform manner, exchange information and build on the different national experiences.

47. In order to foster cooperation between State actors and national rapporteurs and equivalent mechanisms:

(a) National rapporteurs and equivalent mechanisms should adopt a human rights-based and victim-centred approach in their efforts to combat trafficking in persons;

(b) National rapporteurs and equivalent mechanisms should enhance efforts to strengthen partnership, cooperation and coordination with national-level actors and encourage political will at the national level in order to address the root causes of trafficking in persons.

48. **In order to foster cooperation between non-State actors and national rapporteurs and equivalent mechanisms:**

(a) The participation of all stakeholders, including victims of trafficking in persons, CSOs, academia, national human rights institutions, faith-based organizations and the medical and business sectors, should be sought in developing and implementing anti-trafficking responses;

(b) National rapporteurs and equivalent mechanisms should continue engaging more closely with civil society organizations that are involved in combating trafficking in persons and protecting and assisting victims;

(c) Given the low level of engagement of non-State actors other than NGOs working on the issue, capacity-building and awareness-raising campaigns should be devised, tools developed and regular public-private cooperation sought for a coordinated approach to addressing trafficking in persons.

Appendix

[English only]

Agenda of the second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms, 21–22 May 2014

Wednesday, 21 May	
09.00–09.30	Registration
09.30–10.00	*Welcoming remarks*: Mr. Laurent Meillan, Officer-in-Charge, OHCHR, Bangkok Mr. Sebastian Baumeister, UNODC Regional Office, Bangkok *Introduction to the meeting*: Ms. Joy Ngozi Ezeilo, United Nations Special Rapporteur on trafficking in persons, especially women and children
10.00–11.00	**The role of national rapporteurs on trafficking in persons and equivalent mechanisms in addressing trafficking in persons: institutional framework** 1. What are the core functions of national rapporteurs on trafficking in persons and equivalent mechanisms? 2. What are the differences and similarities between national rapporteurs on trafficking in persons and equivalent mechanisms? 3. Which type of national rapporteurs and equivalent mechanisms optimally addresses trafficking in persons (one person or a mechanism dedicated to the issue? Does the size of the country, the severity of the problem, the availability of resources matter?) What are the pros and cons of establishing national rapporteurs and equivalent mechanisms under a Government body or independently? Which Government body is appropriately placed to overview the work of the national rapporteurs and equivalent mechanisms? *Chair*: Ms. Annette Lyth, Regional Project Manager, United Nations Action for Cooperation against Trafficking in Persons (UN-ACT) *Speakers*: 1. Ms. Merav Shmueli, Acting Government Coordinator of the Battle against Trafficking in Persons in the Ministry of Justice, Israel 2. Ms. Fernanda dos Anjos, Coordinator, National Committee for combating Trafficking in Persons, Ministry of Justice, Brazil 3. Mr. Shree Ram Adhikari, In charge of International Desk, National Human Rights Commission, Nepal 4. Mr. Godwin E. Morka, Assistant Director Research and Programme Development, National Agency for the Prohibition of Traffic in Persons and Other Related Matters, Nigeria

	Discussion
11.00–11.15	Coffee break
11.15–12.45	**National rapporteurs on trafficking in persons and equivalent mechanisms in addressing trafficking in persons: institutional framework (*continued*)**
	4. What is the most effective framework for the establishment of national rapporteurs on trafficking in persons and equivalent mechanisms? (legislation, government resolution, office decision) How broad or narrow should the mandate of national rapporteurs and equivalent mechanisms be?
	5. What are some challenges and dilemmas encountered by the national rapporteurs on trafficking in persons and equivalent mechanisms in the course of their work?
	6. What concrete impacts and results do national rapporteurs and equivalent mechanisms have on the effective implementation of anti-trafficking policies and legislation? (Collection of information, reporting, monitoring and evaluation…)
	Chair: Mr. Fernando Garcia-Robles, Coordinator, Anti Trafficking in Persons, Organization of American States (OAS)
	Speakers:
	1. Mr. Khamis Obaid Khamis Alkaabi, Ministry of the Interior, member, National Committee to Combat human trafficking, United Arab Emirates
	2. Mr. Benda Baguma, Coordinator, Counter Human Trafficking National Task Force, Uganda
	3. Mr. Dimitrijs Trofimovs, National Co-ordinator for Combating Trafficking in Human Beings, Latvia
	4. Ms. Darlene R. Pajarito, Inter-Agency, Assistant City Prosecutor Council against Trafficking, Philippines
	Discussion
12.45–14.00	Lunch break
14.00–15.15	**Regional and subregional frameworks supporting the work of national rapporteurs on trafficking in persons and equivalent mechanisms**
	1. How can existing national rapporteurs on trafficking in persons and equivalent mechanisms be strengthened to become efficient key institutions in fighting trafficking in persons at the regional and subregional levels? (Discussing cooperation mechanisms/protocols, mandate to engage with stakeholders at the regional and subregional framework.
	2. What is the role of regional and subregional mechanisms in supporting the work of national rapporteurs and equivalent mechanisms? Concrete examples and best practices.
	Chair: Ms. Federica Donati, Coordinator, Equality, Non-Discrimination and Participation Unit, OHCHR

Speakers:

1. Mr. Fernando Garcia-Robles ,Coordinator, Anti Trafficking in Persons, OAS

2. Ms. Kanda Vajrabhaya, Thailand representative, Association of Southeast Asian Nations Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

3. Ms. Annette Lyth, Regional Project Manager, United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)

Discussion

15.15–15.30 Coffee break

15.30–17.00 **Fostering partnership among national rapporteurs on trafficking in persons and equivalent mechanisms: challenges, dilemmas and lessons learned**

1. How to foster increased and substantial coordination among national mechanisms in order to complement regional and international efforts? Good practices/examples.

2. What challenges and dilemmas do national rapporteurs and equivalent mechanisms face in fostering partnerships between themselves?

Chair:
Ms. Kanda Vajrabhaya, Thailand representative, Association of Southeast Asian Nations Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

Speakers:

1. Ms. Venla Roth, Senior Adviser (Expert on anti-human trafficking issues), Office of the Ombudsman for Minorities, National Rapporteur on Trafficking in Human Beings, Finland

2. Ms. Lina Arbelaez, Minister advisor, Coordinator of Gender Equity Group, Inter institutional committee headed by Ministry of the Interior (as secretary) Ministry of Labour, Colombia

3. Mr. Hamid Patilima, Consultant for Government in Trafficking Issues and Child Protection, Anti-trafficking task force team coordinated by the Ministry for Women's Empowerment and Children's Protection, Indonesia

4. Ms. Shaima Najem, Third Secretary at the International Organizations Directorate, Ministry of Foreign Affairs (as chair of the inter-ministerial national committee to combat trafficking in persons), Bahrain

Discussion

Thursday, 22 May

09.00–10.45 **Fostering cooperation between national rapporteurs and equivalent mechanisms and State and non-State actors in destination, transit and source countries**

1. How can national rapporteurs and equivalent mechanisms foster cooperation with State actors in destination, transit and source countries while retaining independence and impartiality? Challenges and good practices.

	2. What is the role of national rapporteurs in strengthening cooperation with non-State actors (including CSOs, business and medical communities)? Challenges and good practices.
	Chair: Ms. Szilvia Petkov, Associate Programme Officer, UNODC
	Speakers:
	1. Mr. Adrian Petrescu, National Agency Against Trafficking in Persons, Romania
	2. Ms. Mercedes Pelaez Ferrusca, Director General for Human Rights, Ministry of the Interior, Mexico
	3. Ms. Praveen Kumari Singh, Director, Anti-trafficking cell, Ministry of Home Affairs, India
	4. Ms. Syuhaida Abdul Wahab Zen, Secretariat to the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, International Division, Ministry of Home Affairs, Malaysia
	5. Mr. Abderrazzak Rouwane, Secretary General, Inter-Ministerial Commission to Combat Trafficking in Persons, Morocco
	Discussion
10.45–11.00	Coffee break
11.00–12.45	**Way forward: recommendations on strengthening partnership among national rapporteurs and equivalent mechanisms**
	Chair: Ms. Joy Ngozi Ezeilo, United Nations Special Rapporteur on trafficking in persons, especially women and children
	Chairs to highlight 3 main conclusions from each session
	Discussion
	Closing remarks: Ms. Joy Ngozi Ezeilo, United Nations Special Rapporteur on trafficking in persons, especially women and children
12.45–14.00	Lunch

List of participants in the second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms

1. Representatives of Member States

Ms. Shaima Najem, Third Secretary, International Organizations Directorate, Ministry of Foreign Affairs, Bahrain

Ms. Fernanda dos Anjos, Director, Department of Justice and Coordinator, National Policy for Combating Trafficking in Persons, Ministry of Justice, Brazil

Ms. Arun San, Chair of COMMIT Taskforce, and Secretary of State, Ministry of Women's Affairs, Cambodia

Mr. Chen Shiqu, Head of the Office, Combating Human Trafficking, Criminal Investigation Department, Ministry of Public Security, China

Ms. Lina Arbelaez, Minister Advisor, Director of Labour, Equity Group, Ministry of Labour, Colombia

Ms. Venla Roth, Senior officer, Office of the National Rapporteur on Trafficking in Human Beings/Ombudsman for Minorities, Finland

Ms. Praveen Kumari Singh, Director, Anti-trafficking cell, Ministry of Home Affairs, India

Mr. Hamid Patilima, Anti-trafficking task force team coordinated by the Ministry for Women's Empowerment and Children's Protection, Indonesia

Ms. Merav Shmueli, Acting Government Coordinator of the Battle against Trafficking in Persons in the Ministry of Justice, Israel

Mr. Dimitrijs Trofimovs, Director, Sectoral Policy Department, National Co-ordinator for Combating Trafficking in Human Beings, Latvia

Ms. Thoummaly Vongphachanh, Director, Counselling and Protection Center for Women and Children, Lao People's Democratic Republic

Ms. Syuhaida Abdul Wahab Zen, Deputy Undersecretary, Secretariat for Trafficking in Persons, International Division, Ministry of Home Affairs, Malaysia

Ms. Engku Norazilah E. Abdullah, Assistant Secretary, Secretariat for Trafficking in Persons, International Division, Ministry of Home Affairs, Malaysia

Ms. Nur Afida Zahazmi, Assistant Secretary, Multilateral Security Division, Ministry of Foreign Affairs, Malaysia

Mr. Gerardo Prato, Ambassador of Uruguay, Malaysia

Ms. Mercedes Pelaez Ferrusca, Director General for Human Rights, Ministry of the Interior, Mexico

Mr. Seddafi Abdelatif, Embassy of the Kingdom of Morocco in Thailand, Morocco

Mr. Abderrazzak Rouwane, Secretary General, Inter-Ministerial Delegation for Human Rights, Morocco

Mr. Win Naing Tun, Head of Myanmar COMMIT Taskforce; Head of Anti-Trafficking in Persons Division, Myanmar Police Force, Ministry of Home Affairs, Myanmar

Mr. Shree Ram Adhikari, In charge of International Desk, National Human Rights Commission, Nepal

Ms. Manju Khatiwada, Senior Human Rights Officer, National Human Rights Commission, Nepal

Mr. Godwin E. Morka, Assistant Director, Research and Programme Development, National Agency for the Prohibition of Traffic in Persons and Other Related Matters, Nigeria

Ms. Darlene R Pajarito, Assistant city prosecutor, Department of Justice, Philippines

Mr. Adrian Petrescu, National Agency Against Trafficking in Persons, Romania

Mr. Khamis Alkaabi, Ministry of the Interior, Member, National Committee to combat trafficking in persons, United Arab Emirates

Mr. Ahmed Bahaddin Khier, Member, National Committee to combat trafficking in persons, United Arab Emirates

Ms. Sara Shohail, Member, National Committee to combat trafficking in persons, and General Director, Ewaa Shelter, United Arab Emirates

Mr. Benda Baguma, Office of the President, member of National Anti-trafficking Task Force, Uganda

Mr. Le Van Chuong, Deputy Administrator, Steering Office on Anti-drug and Crime, Ministry of Public Security, Viet Nam

2. United Nations, international and regional organizations

Ms. Kanda Vajrabhaya, Thailand representative, Association of Southeast Asian Nations Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

Mr. Fernando Garcia-Robles, Coordinator, Anti-Trafficking in Persons, OAS

Ms. Joy Ngozi Ezeilo, United Nations Special Rapporteur on trafficking in persons, especially women and children

Ms. Annette Lyth, Regional Project Manager, United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)

Mr. Lim Tith, National project Coordinator, UN-ACT, Cambodia

Ms. He Yunxiao, National project Coordinator, UN-ACT, China

Ms. Xoukiet Panyanouvong, National Project Coordinator, UN-ACT, Lao People's Democratic Republic

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Progress report of the United Nations High Commissioner for Human Rights on legal options and practical measures to improve access to remedy for victims of business-related human rights abuses

Summary

The present report is submitted pursuant to paragraph 7 of Human Rights Council resolution 26/22, in which the Council requested the United Nations High Commissioner for Human Rights to continue work to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses. The report presents information on the accountability and remedy project of the Office of the United Nations High Commissioner for Human Rights on corporate accountability and access to judicial remedy in cases of business involvement in severe human rights abuses. It outlines the main work streams of the project, its two complementary research processes to gather data and input, and progress to date, and highlights initial findings and key areas for further investigation that are emerging from preliminary research and studies undertaken for two of the six work streams.

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I. Introduction

A. Background and mandate

1. Ensuring access to effective remedy for those affected by business-related human rights abuses is one of the three pillars of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), which were endorsed by the Human Rights Council in June 2011. The right to a remedy for victims of human rights abuses is a core tenet of the international human rights system. In the Guiding Principles, it is recognized that ensuring access to effective remedy is part of the duty of all States to prevent human rights abuses from being committed within their territory and/or jurisdiction by third parties, including business enterprises. Guiding Principle 26 provides that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

2. In the commentary to Guiding Principle 26, the challenges faced by individuals seeking remedies in cases of business-related human rights abuses are highlighted. Extensive research by civil society organizations and others into the accessibility and utility of judicial mechanisms as a means of obtaining remedy in cases of business-related human rights abuses have confirmed that those adversely affected by such abuses frequently struggle to access effective remedies. Particular problems have been noticed in cases that may amount to gross human rights abuses and international crimes, in which the combined effect of factors such as a lack of adequately functioning domestic judicial mechanisms, a lack of clarity about the relevant legal standards and fears of reprisals against victims and witnesses will often prevent victims from obtaining any redress at all.

3. In 2013, as part of its core mandate to advance the protection and promotion of human rights globally and of its ongoing work to advance the implementation of the Guiding Principles, the Office of the United Nations High Commissioner for Human Rights (OHCHR) commissioned an initial study into the effectiveness of domestic judicial mechanisms in cases of alleged business involvement in gross human rights abuses.[1] Reviewing empirical evidence from 11 different jurisdictions and around 40 legal cases, the study concluded that the present system of domestic law remedies for these kinds of cases is "patchy, unpredictable, often ineffective and fragile".[2] It outlined a number of areas where further clarification of policy and principle may help improve access to remedy for victims, and also called for more attention to be paid to the reasons behind the apparently

[1] Jennifer Zerk, "Corporate liability for gross human rights abuses: towards a fairer and more effective system of domestic law remedies", study prepared for OHCHR in February 2014 (http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx). The author notes that, in its *Interpretive Guide to the Corporate Responsibility to Respect Human Rights*, OHCHR writes that there is no uniform definition of gross human rights abuses in international law and she does not seek to establish her own definition. However, also according to the *Interpretive Guide*, the following practices would generally be included: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, enforced disappearances, arbitrary and prolonged detention, and systematic discrimination. Other kinds of human rights violations, including violations of economic, social and cultural rights, can also count as gross violations if they are grave and systematic, for example if they take place on a large scale or are targeted at particular population groups. The *Interpretive Guide* is available from www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

[2] Jennifer Zerk, "Corporate liability for gross human rights abuses", p. 7.

very low number of business enterprises prosecuted in national courts for involvement in gross human rights abuses. After the study was published in February 2014, OHCHR invited all stakeholders to respond to the key findings.[1] This public consultation process took place in the first half of 2014. On the basis of the study's findings and the submissions received from stakeholders, OHCHR drew up plans for further work that underwent a process of expert review in September 2014. The OHCHR expert review group comprised representatives of States, United Nations agencies, business organizations, trade union representatives, law firms, barristers' chambers, academic institutions and civil society groups.

4. Recognizing the need for greater international focus on the issue of access to remedy and for additional guidance on the implementation of the pillar on access to remedy of the Guiding Principles, the Human Rights Council, in paragraph 7 of its resolution 26/22, requested the High Commissioner to continue work to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses, in collaboration with the Working Group on the issue of human rights and transnational corporations and other business enterprises, to organize consultations with experts, States and other relevant stakeholders to facilitate mutual understanding and greater consensus among different views. The Council also requested the High Commissioner to publish a progress report on that work before its twenty-ninth session and to present a final report for consideration at its thirty-second session.

5. In November 2014, in response to the issues identified in the initial study and in subsequent submissions and expert meetings, and pursuant to the mandate from the Human Rights Council, OHCHR launched the accountability and remedy project to contribute to making domestic legal responses fairer and more effective for victims of business-related human rights abuses, particularly in cases of severe abuses. In accordance with Council resolution 26/22, OHCHR will submit a report on the outcomes and findings of the project at the Council's thirty-second session. The present report provides an overview of the project, its scope and methodology, progress to date and key findings emerging from various preparatory research activities.

B. Aims and scope

6. The overall aim of the accountability and remedy project is to develop recommendations and guidance for States on how to achieve a fairer and more effective system of domestic law remedies in cases of business-related human rights abuses, particularly in cases of severe abuses.

7. OHCHR understands a "fairer and more effective system of domestic law remedies" to be one in which all victims, without discrimination, have access to an effective remedy and no one is denied access to justice because of his or her location; in which victims are able to seek justice irrespective of their financial resources; that is based on clear standards of corporate behaviour; and in which enforcement and sanctions ensure accountability and contribute to preventing future harm.

8. To this end, the project has two key aims:

(a) To clarify standards and tests for corporate legal liability under domestic law;

[1] A summary of the submissions is available from www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/RemedyProject1.pdf.

(b) To develop credible and workable recommendations and guidance for States in relation to each of the six project components (see sect. II.A) to enable a stronger and more consistent implementation of the Guiding Principles, particularly in so far as business involvement in severe human rights abuses is concerned.

9. The decision to focus on cases of severe abuse in the first instance has been taken for strategic, substantive and methodological reasons. First, this prioritization is justified by the severity of impacts for victims. Second, as noted above, business involvement in gross human rights abuses poses a particular set of challenges in respect of access to remedy. Third, the steps already taken by many States to ensure that international crimes are punishable at the domestic level make it likely that focusing on the severest forms of human rights abuse will be the most useful and revealing starting point for close comparative analysis. However, this in no way implies that severe business-related human rights abuses should be the sole focus of States' regulatory action. On the contrary, mindful that the Guiding Principles address the full range of business-related human rights impacts, and that in many contexts it is impossible or undesirable to carve out specialist regimes for a particular class of human rights abuses, OHCHR will be examining the outcomes of the accountability and remedy project for lessons of relevance for access to remedy not only in the severest cases.

10. The accountability and remedy project will focus on judicial mechanisms for gaining access to remedy. This is not to diminish the importance of non-judicial mechanisms, which, as noted in Guiding Principle 27, are part of a comprehensive State-based system for the remedy of business-related human rights abuse. However, given the project's focus on the severest cases, which by their very nature may raise issues of possible criminal behaviour, it is appropriate to focus on domestic mechanisms responsible for enforcing criminal law. Data on the use of non-judicial mechanisms will be collected (see sect. II.B), as OHCHR recognizes the role that such mechanisms can play in reducing the costs of dispute resolution and in creating more opportunities for victims to access effective remedies. In order for States to effectively hold businesses to account and to ensure access to remedy in the severest cases, however, non-judicial mechanisms must be backed up by effective judicial mechanisms.

11. Finally, although the project focuses on access to remedy issues, there is a need for both States and businesses to make concerted and increased efforts to develop better preventive practices and policies with respect to business-related human rights abuses. While the development of preventive practices and policies are beyond the scope of the project, the methodology recognizes the relationships that can exist between the preventive efforts of a business enterprise and its legal risks and culpability. As part of the project, input will be gathered from many different jurisdictions on issues such as the bearing that human rights due diligence may have on legal liability and sanctioning, in order to better explore the linkages that exist between prevention and legal liability. This will be done to ensure that the practical recommendations arising from the project address, to the extent possible, the need for prevention as well as remedy.

12. The mandate of the accountability and remedy project is separate from, but potentially complementary to, the decision made by the Human Rights Council in its resolution 26/9 to establish an open-ended intergovernmental working group on human rights and transnational corporations and other business enterprises to elaborate an international legally binding instrument. The project is not linked to the negotiations on that instrument. However, if the intergovernmental working group so decides, it could draw upon material emerging from the project in its discussions.

II. Accountability and remedy project

A. Overview of project components

13. The accountability and remedy project comprises six distinct but interrelated components. Each component has been chosen based on issues identified in research and consultations as requiring further clarification in terms of policy and principles. The components have also been selected for their strategic value and the potential they have to result in outcomes that can make a practical difference for affected stakeholders in the short-to-medium term. Each component is distinct and has its own methodology, but is linked in important ways to the others. In all cases, the methodology is based on inclusive multi-stakeholder and expert inputs and consultations. The six project components are the following:

(a) Project component 1, on domestic law tests for corporate accountability. This component will clarify how different domestic legal systems attribute and assess corporate legal liability for serious human rights abuses. It will identify good practices to guide States in deciding which factors need to be taken into account in assessing corporate liability in cases of alleged involvement in serious human rights abuses. Information will be gathered primarily through the global online consultation and the detailed comparative process described below (see sect. II.B);

(b) Project component 2, on the roles and responsibilities of interested States. This component will explore State practices and attitudes with respect to the appropriate use of extraterritorial jurisdiction and domestic measures with extraterritorial implications. It will identify good practices to guide States in managing cross-border cases and explore possible models of international and bilateral cooperation. Analyses will primarily take place through face-to-face work with government representatives, which will be complemented by multi-stakeholder consultations and discussions. Preparatory studies of State practice have been carried out in relation to labour rights issues and current State practices and attitudes with respect to the use of extraterritorial jurisdiction, examples of which are provided through amicus curiae briefs by sovereign States in cases involving the alien tort statute in the courts of the United States of America. The findings of these preparatory studies will be used to inform future work and discussions (see sects. III.B-C);

(c) Project component 3, on overcoming financial obstacles to legal claims. This component will look at strategies and practices to assist claimants who would otherwise be prevented from accessing judicial mechanisms owing to legal costs, and result in guidance on "minimum steps" and "good-practice options" for States. Information will be gathered primarily through the global online consultation and the detailed comparative process described below (see sect. II.B). To complement these processes, OHCHR has also conducted a review of recent comparative research in relation to the costs of bringing legal claims under private law (see sect. III);

(d) Project component 4, on criminal sanctions. This component will survey current and emerging State practice in relation to criminal sanctioning of corporations for serious human rights abuses and identify "good-practice models" for States, taking into account innovations from other areas of criminal law. Information will be gathered primarily through the global online consultation and the detailed comparative process described below (see sect. II.B);

(e) Project component 5, on civil law remedies. This component will survey current and emerging State practice in relation to civil law (private law) damages in cases of serious corporate human rights harm, explore the role of domestic judicial mechanisms in relation to the supervision and implementation of settlements and awards, and identify

possible "good-practice models" for States, taking into account innovations from other areas of private law. Information will be gathered primarily through the global online consultation and the detailed comparative process described below (see sect. II.B);

(f) Project component 6, on practices and policies of domestic prosecution bodies. This component aims to investigate the reasons behind the apparently very low levels of activity by domestic criminal law enforcement agencies in relation to alleged business involvement in gross human rights abuses. It will seek to identify challenges faced by domestic prosecutors in such cases and to develop a set of recommendations for States on ways to begin addressing those challenges. Information will be gathered and analysis will be conducted primarily through face-to-face work with prosecutors and other experts from law enforcement, regulatory bodies and academic institutions.

B. Global online consultation and detailed comparative process

14. The accountability and remedy project research process has been designed to make sure that any recommended action is well-directed and capable of improving access to justice for victims at a practical level. Whether legal, practical or technological interventions are called for, they must be capable of responding to local needs, structures and contexts. Local knowledge and insight is needed to ensure that proposals are capable both of being implemented and of producing the desired results. This requires engagement with experts in a wide range of jurisdictions, across different geographical areas, legal systems and traditions and stages of economic development.

15. To maximize the time and resources available, information for four of the six projects is being gathered through two complementary research processes: the global online consultation, which consists of a global online survey; and the detailed comparative process, which consists of a focused, in-depth research process into 25 focus jurisdictions.

16. The information from both processes will be reviewed and analysed by independent expert academic reviewers who have agreed to contribute their time and expertise to the project. The methodology aims to include a wide range of stakeholders in the research and information-gathering process and to subject all findings to thorough multi-stakeholder consultations. Both processes will continue until August 2015, at which point OHCHR will begin project-specific analysis in collaboration with stakeholders and academic experts.

17. At the time of submitting the present report, the global online consultation was being prepared for launch at the end of April 2015. The consultation consists of a global online survey in English, French and Spanish through which all stakeholders with relevant knowledge of a jurisdiction may submit information. The survey covers tests for assessing corporate legal liability under criminal, quasi-criminal and civil law; funding options for legal claims; criminal and quasi-criminal law sanctions; civil law remedies; and issues related to the work of domestic prosecution bodies in bringing cases against business enterprises. The consultation will remain open until 1 August 2015.

18. OHCHR encourages all relevant stakeholders, in particular States, to contribute to the project by submitting information through the global online consultation. Gathering information on a wide range of jurisdictions is critical to helping to ensure that the recommendations for each project take into account the realities on the ground. The global online consultation seeks to ensure that data is collected from the widest possible range of jurisdictions, with the aim of ensuring that the eventual outputs and findings take account of a broad range of legal traditions and systems, respond to the actual situations encountered in different States and are fit-for-purpose for all States. It is also an opportunity for all stakeholders to provide comments about opportunities and challenges and information about relevant cases and situations they have encountered.

19. The detailed comparative process is a focused, in-depth research process comprising legal research done by legal experts in relation to 25 focus jurisdictions, the results of which will be used for comparative analysis. The 25 jurisdictions have been carefully chosen to reflect geographical and regional diversity, as well as a diversity of legal systems and traditions and levels of economic development. The process comprises two tracks, the first of which focuses on legal research into the current laws in the focus jurisdictions and the second of which focuses on gathering practical experiences and perspectives from public interest lawyers and others who represent victims of business-related human rights abuses before the courts.

20. At the time of submitting the present report, the detailed comparative process had commenced for most of the selected focus jurisdictions. After reports on the results arising from the two tracks have been submitted, OHCHR will work with academics to review the information received and help contextualize it with reference to the overall legal system and broader social and economic issues of each focus jurisdiction.

C. Future consultations and next steps

21. Subject to obtaining sufficient resources, OHCHR plans to hold expert meetings and consultations for each of the six projects starting in September 2015 and to be completed by the first quarter of 2016. In collaboration with the Working Group on the issue of human rights and transnational corporations and other business enterprises, initial findings and analysis from the projects under the accountability and remedy project will be presented at the Forum on Business and Human Rights to be held in Geneva from 16 to 18 November 2015, to enable multi-stakeholder discussion in a public format.

22. Initial findings and areas for further inquiry arising from the activities undertaken to date are outlined in section III below.

III. Preliminary research: key outputs and issues

A. Preparatory work relating to project component 2: roles and responsibilities of interested States

23. As noted above, project component 2 of the accountability and remedy project will explore State practice and attitudes with respect to the appropriate use of extraterritorial jurisdiction and domestic measures with extraterritorial implications. It will identify good practices to guide States in managing cross-border cases and explore possible models of international and bilateral cooperation.

24. Not all cases involving allegations of business-related human rights abuses raise cross-border issues. In cases where those involved are all located in and the relevant facts have all taken place in a single jurisdiction, questions of extraterritorial jurisdiction and international cooperation may not arise. However, cases of business involvement in serious human rights abuses do frequently involve a cross-border element. In many cases, this is because those involved are located in more than one jurisdiction or because other connecting factors to a prosecution or dispute (such as material actions or decisions) are alleged to have occurred or been made in different jurisdictions.

25. Cross-border cases give rise to a particular set of difficulties for domestic law enforcement bodies, prosecutors and victims. Extensive research by civil society organizations and others has documented the many challenges involved in accessing judicial remedy in these kinds of cases. These comprise legal challenges (such as

establishing personal and subject-matter jurisdiction, identifying the correct set of legal rules to apply to the case and problems relating to enforcement) and many practical and logistical issues associated with gathering information and the availability of witnesses.

26. The current debate about the appropriate use of extraterritorial jurisdiction in respect of cases of business-related human rights abuses takes place against this background. A key aim of project component 2 will be to find ways to build on existing State practice, including from other regulatory areas, to propose practical solutions to challenges that are frequently encountered in cross-border cases.

27. Project component 2 takes, as its starting point, Guiding Principle 2, which calls upon States to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. In the commentary to the Principle, it is noted that States have adopted a range of approaches in this regard, including the establishment of criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. It is also noted that various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement. A number of the treaty bodies that monitor the implementation of the core international human rights treaties have also taken the view that the responsibilities of State parties under the conventions include taking appropriate steps to ensure that the actions of enterprises domiciled in their territory or jurisdiction do not infringe on human rights in other countries.[4]

28. Further important context for project component 2 is provided by Guiding Principle 7, which states that because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses. Furthermore, Guiding Principle 26 stipulates that States should consider ways to reduce legal, practical and other relevant barriers that could lead to a denial of remedy. In the commentary to Principle 26, it is noted that legal barriers can arise, for example, . where claimants face a denial of justice in a host State and cannot access to the home State courts regardless of the merits of the claim.

29. Previous research into State practice in other regulatory areas has helped to shed light on the use by States of extraterritorial jurisdiction and domestic measures with extraterritorial implications in practice.[5] In recent years, States have been increasingly prepared to use direct extraterritorial jurisdiction in relation to criminal activity such as

[4] See Committee on Economic, Social and Cultural Rights general comment No. 15 and the Committee's statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/C.12/2011/1) and the Committee on the Rights of the Child general comment No. 16. A number of treaty bodies have recommended that States take appropriate measures to regulate the extraterritorial conduct of enterprises domiciled in their territory or jurisdiction (see, for example, CERD/C/AUS/CO/15-17, para. 13; CRC/C/AZE/CO/3-4, para. 29; CRC/C/BHR/CO/2-3, para. 21; CRC/C/ITA/CO/3-4, para. 25; and CRC/C/KOR/CO/3-4, para. 27). A number of human rights advocates and experts have also endorsed the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, including in the context of non-State actors. While these principles have not been endorsed or adopted by the United Nations system, they provide information about the views of many human rights experts on the issue of extraterritorial responsibilities under human rights treaties.

[5] Jennifer Zerk, "Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas", June 2010 (www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_59_zerk.pdf).

terrorism, money-laundering, corruption, grave human rights abuses and sexual offences against children. Looking at these different areas, certain patterns can be identified in relation to the uses of and reactions to extraterritorial jurisdiction and domestic measures with extraterritorial implications. For instance, these measures are more likely to be viewed by affected States as reasonable if the regulation is authorized under a bilateral or multilateral regime, is designed to deal with an issue of international concern (rather than primarily domestic interests), has been developed in consultation with and takes account of the interests of other States and includes procedures for the resolution of competing jurisdictional claims.

30. This research has also highlighted the various options that may be open to States to help overcome the practical problems that are commonly encountered in cross-border cases. In relation to bribery and corruption, for instance, law enforcement bodies of different States have carried out joint investigations and have entered into case-specific agreements as to appropriate enforcement strategies and the sharing of financial penalties.

31. Following up on the recommendations emerging from the initial study commissioned by OHCHR in 2013 into the effectiveness of domestic judicial mechanisms, project component 2 will consider the extent to which models of international cooperation and lessons on the use of extraterritorial jurisdiction from other regulatory areas can be applied to help overcome challenges in relation to cross-border cases concerning severe business-related human rights abuses.

32. At the time of submitting the present report, two separate preliminary studies for project component 2 had been completed. While they dealt with very different subject matters, they had a common underlying aim, namely to gather empirical evidence with the potential to shed light on State practice and attitudes with respect to the appropriate use of extraterritorial jurisdiction and domestic measures with extraterritorial implications.

B. Review of State interventions in respect of assertions of extraterritorial jurisdiction by United States courts in alien tort statute cases

33. The alien tort statute (United States Code, Title 28, sect. 1350) grants jurisdiction to United States federal district courts in respect of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. In recent decades, plaintiffs have sought to use the statute to bring claims in United States courts for violations of human rights committed overseas, including in cases alleging abuses by business enterprises domiciled outside the United States. While the number of successful cases is small, victims and their representatives have seen the statute as an important means for redress where claimants are not able to obtain remedy through the courts of the State in which the alleged abuse occurred. By their nature, these cases invoke questions about the appropriate assertion of extraterritorial jurisdiction. In a number of cases involving the statute, States and State agencies have intervened in the litigation by way of letter, declaration or (most commonly) amicus curiae briefs expressing views about the appropriate limits of jurisdiction in the particular case or, more generally, as a matter of policy. The aim of this study was to review as many of these State interventions as possible and to consider what they might reveal about past and current State practices and views with respect to the use of extraterritorial jurisdiction in cases involving allegations of business involvement in serious human rights abuses. In particular:

(a) What are the main arguments used for and against the use of extraterritorial jurisdiction in human rights cases?

(b) How do these arguments differ from arguments for and against extraterritorial jurisdiction in other regulatory areas?

(c) To what extent is there already consensus between States as to the circumstances in which the use of extraterritorial jurisdiction should be prohibited, tolerated or encouraged in human rights cases and the limits that should be observed?

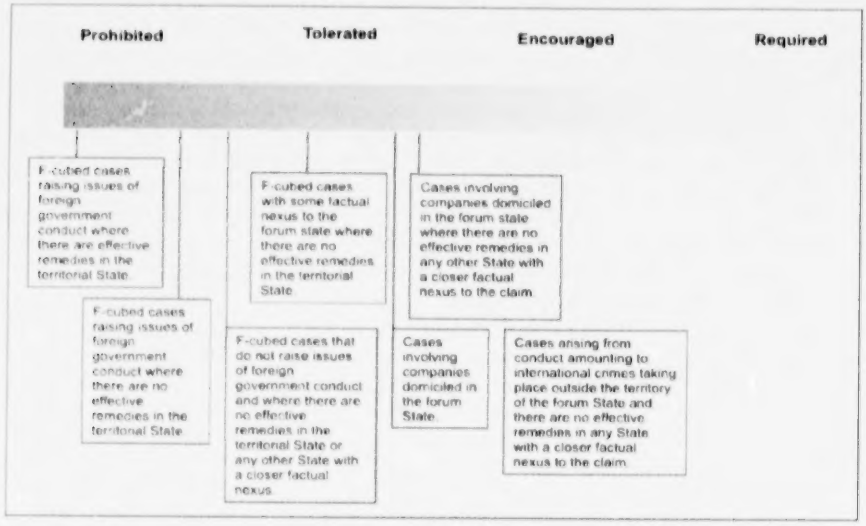
(d) What do States view as the best safeguards against "excessive" claims of extraterritorial jurisdiction and how can jurisdictional conflicts best be resolved?

34. The review was carried out in April 2015. Information contained in legal databases revealed that State interventions in relation to jurisdictional issues, numbering around 30, had been made in at least 10 separate legal cases. These briefs and submissions (originating in 12 different jurisdictions) were then reviewed; arguments for and against extraterritorial jurisdiction and case-specific comments and concerns were also noted. It is recognized that these amicus curiae briefs and other interventions were filed and made in a legal context that predates the landmark 2013 decision of the United States Supreme Court in *Kiobel v. Royal Dutch Petroleum*. However, this does not diminish the significance of these documents as evidence of past and current State practice and attitudes with respect to the use of extraterritorial jurisdiction in civil cases raising allegations of business involvement in serious human rights abuses.

35. Only a small number of States have made interventions in cases involving the alien tort statute on jurisdictional matters. Of these, the United States is the State that has intervened most frequently by far, followed by States that have been States of domicile for defendant companies in specific cases. Only a tiny number of States have ever sought to intervene in cases involving the alien tort statute concerning activities and alleged abuses taking place in their own territories. This means that it is impossible to draw definite conclusions about the extent to which there may be a consensus about the use of extraterritorial jurisdiction in human rights cases from this data alone. It should also be recognized these briefs cover several decades, and that views and attitudes within a State may have shifted, especially where administrations have changed. However, the study findings do help to shed light on the kinds of case scenarios in relation to which extraterritorial jurisdiction has been opposed, the degrees of opposition which have existed in different kinds of cases and the case scenarios in which exercises of extraterritorial subject-matter jurisdiction were more likely to have been accepted.

36. Based on the State amicus briefs and other interventions reviewed in the course of this study, the figure below is an attempt to plot where various kinds of cases may sit on a spectrum of possible State attitudes to exercises of extraterritorial subject-matter jurisdiction in cases of allegations of corporate involvement in serious human rights abuses, from "prohibited" at one extreme to "required" at the other. The study did not uncover any evidence of State practice to suggest that there may be business-related human rights cases in relation to which the exercise of extraterritorial subject-matter jurisdiction is required as a matter of customary international law, or even encouraged as a matter of policy. However, there are a number of other possible scenarios that fall elsewhere on the spectrum, between "prohibited" and "tolerated".

Illustration of the possible spectrum of State attitudes to exercises of extraterritorial jurisdiction in different scenarios, as indicated by the content of State interventions in alien tort statute cases


Prohibited
Tolerated
Encouraged
Required
F-cubed cases raising issues of foreign government conduct where there are effective remedies in the territorial State
F-cubed cases raising issues of foreign government conduct where there are no effective remedies in the territorial State
F-cubed cases with some factual nexus to the forum state where there are no effective remedies in the territorial State
F-cubed cases that do not raise issues of foreign government conduct and where there are no effective remedies in the territorial State or any other State with a closer factual nexus
Cases involving companies domiciled in the forum state where there are no effective remedies in any other State with a closer factual nexus to the claim
Cases involving companies domiciled in the forum State
Cases arising from conduct amounting to international crimes taking place outside the territory of the forum State and there are no effective remedies in any State with a closer factual nexus to the claim

Note: The figure has been prepared for discussion purposes only. It is based on the indications provided by the content of State interventions in alien tort statute cases, which, as acknowledged above, have been made only by a small number of interested States. It does not represent, and should not be taken as representing, the views of OHCHR as to the legality or desirability (or otherwise) of exercises of extraterritorial jurisdiction in different scenarios, or of the criteria that should be applied to determine legality. In the figure above the term "F-cubed" is used for cases where the claim is brought by foreign plaintiffs, against foreign defendants, in relation to foreign business activities.

37. In addition, the review of amicus curiae briefs highlights several areas of uncertainty and possible differences of approach between States in relation to key issues such as "universal civil jurisdiction", the applicability of a doctrine of "exhaustion of legal remedies", the extent to which a factual nexus is required between the claim and the State in which the dispute is litigated (i.e. the "forum State") for the courts of the forum State to be able to exercise jurisdiction at all and, finally, the extent to which the nature and severity of the abuse may have a bearing on the way that jurisdictional rules are applied. The questions arising from this study in relation to these specific issues, as well as the broad study findings, will be explored more fully in the interactive sessions with government representatives due to take place later in 2015 (subject to OHCHR obtaining sufficient funds), as part of the planned programme of work under project component 2.

C. Survey of key provisions and State practice under selected International Labour Organization instruments

38. As part of its preparatory work for project component 2, OHCHR identified a need to better understand the extent to which States already cooperate with respect to business-related human rights abuses, and the different forms this cooperation may take. To this end, OHCHR conducted a review of the terms of and State practice pursuant to selected

International Labour Organization (ILO) treaties and protocols, aimed at combating two specific areas of business-related human rights abuses, namely forced labour and the worst forms of child labour.[6] The aims of the study were:

(a) To examine the approach of certain ILO treaties to cross-border issues and problems, in particular the extent to which States parties are required to regulate foreign parties and conduct and cooperate in respect of the identification, investigation and enforcement of offences;

(b) To clarify the geographical scope of treaty provisions relating to access to remedy;

(c) To gather information relating to State practice under these treaty provisions in order to gain an insight into how States parties are interpreting their treaty obligations with respect to regulation, enforcement and access to remedy in practice.

39. OHCHR carried out the project in February and March 2015 as a desk review, with inputs from ILO. The review of international instruments focused on key treaties and ILO recommendations relating to forced labour and the worst forms of child labour. In addition, given that migrant workers and members of indigenous communities are at particular risk of such abuses, the review also covered ILO treaties relating to these groups. To gain a better understanding of State practice in relation to the two focus areas, the review was followed by an analysis of the most recent comments of ILO treaty monitoring bodies in relation to a sample group of 35 jurisdictions (which included the 25 focus jurisdictions selected for the purposes of the detailed comparative process).

40. The results of the preliminary study suggest that, even where States parties are strongly encouraged to consider the use of extraterritorial jurisdiction to combat serious human rights abuses by its own nationals, this is a regulatory method that is resorted to rarely in practice and then only in relation to a narrow range of offences. The measures implemented by States parties with respect to business enterprises seem to focus almost entirely on cases affecting human rights within the national territory. No examples of measures aimed specifically at addressing extraterritorial impacts of business enterprises were identified in the course of the study, although examples of "domestic measures with extraterritorial implications", such as public information campaigns that are delivered through foreign diplomatic missions and the close monitoring of recruitment organizations, were identified. In addition, the study identified many and varied examples of international and regional cooperation initiatives. These included information-gathering and information-sharing initiatives to aid the detection of crimes, technical assistance, capacity-building and awareness-raising projects, bilateral and regional agreements covering operational matters and initiatives aimed at informing people of their rights and victims of abuse of where to get help.

D. Preparatory work relating to project component 3: overcoming financial obstacles to legal claims

41. Successive investigations into barriers to accessing remedy, including the initial study commissioned by OHCHR in 2013, confirm that financial obstacles to legal claims can be among the most difficult to overcome in practice. This is also recognized in the Guiding Principles. In the commentary to Principle 26, it is noted that practical and procedural barriers to accessing judicial remedy can arise where the costs of bringing

[6] The full study is available from www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx.

claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through government support, "market-based" mechanisms (such as litigation insurance and legal fee structures) or other means.

42. The initial study commissioned by OHCHR in 2013 highlighted many differences between jurisdictions with respect to the extent to which States have taken steps to reduce financial obstacles to legal claims and the availability and operation of various options to reduce costs and financial risks in practice. These differences, (together with other factors identified in the study), are contributing to a number of structural problems in the overall domestic remedial system, including inequalities in levels of legal protection and, arguably, distortions in patterns of use of judicial mechanisms which may have implications for legal development and access to justice in the longer term. Because of the short-, medium- and long-term strategic significance of legal funding issues, overcoming financial obstacles to legal claims has emerged as a key theme for future work by OHCHR and, as such, will be addressed through a dedicated work stream in the OHCHR accountability and remedy project. Project component 3 will look at strategies and practices to assist claimants who would otherwise be prevented from accessing judicial mechanisms owing to legal costs, and result in guidance on "minimum steps" and "good-practice options" for States.

43. OHCHR has identified the need for further research to be carried out, not just in respect of the efficacy of different regulatory options but also in respect of the packages of options that, taken together, are most likely to produce optimal outcomes and the feasibility of the options against the background of different legal structures and conditions and levels of economic development. Detailed information (relating to matters such as the availability of government support in business and human rights cases, other third-party funding sources, pro bono help, conditional and contingency fee arrangements, cost shifting rules and other methods and rules that have implications for the costs of litigation to individual claimants) will be collected from as many different jurisdictions around the world as possible through the global online consultation and, in respect of the 25 focus jurisdictions, through the detailed comparative process. As part of these processes, stakeholders will be asked for their views as to the efficacy of different measures and groups of measures, and how these may be improved. This feedback will be taken into account in the development of the practical guidance referred to above.

44. The research methodology used by OHCHR for project component 3 has been informed by past and ongoing investigations into the costs of civil and criminal procedures at the domestic level. Preparatory work for the component included a review of the data and research findings compiled by researchers from the University of Oxford during 2009 following a study of the costs and funding of civil litigation in more than 30 jurisdictions around the world.[7]

45. The Oxford study highlights a number of trends of relevance for future work on the accountability and remedy project. These include the significant contraction in the availability of legal aid that is taking place in many States, the growing interest in contingency fees (including in States that have traditionally shown strong cultural resistance to the idea of lawyers being paid a percentage of civil damages), developments in litigation insurance markets and the arrival of third party litigation funders. Other insights from the Oxford study have implications for the project more generally, including the unintended consequences that can result from piecemeal regulatory reform and the need for a proper understanding of the linkages between different access to justice measures that affect their efficacy in practice. Finally, the Oxford study provides a reminder that issues

[7] Christopher Hodges, Stefan Vogenauer and Magdalena Tulibacka, eds., *The Costs and Funding of Civil Litigation: a Comparative Perspective* (Oxford, Hart Publishing, 2010).

relating to financial obstacles to legal claims cannot be divorced entirely from wider questions about the structure and efficiency of civil redress systems. This is because there are many aspects of civil procedure and legal principle, covered in other work streams of the project (see sect. II.A),that will have implications for the legal costs and levels of financial risk faced by claimants.

46. While this potentially raises many more issues than the accountability and remedy project can realistically cover, OHCHR recognizes the importance of efficiency and cost-reduction measures as part of an overarching strategy to address financial obstacles to legal claims. Therefore, OHCHR will be gathering information and feedback on domestic initiatives to improve the efficiency and functioning of judicial mechanisms specifically in the context of cases concerning business-related human rights abuses, in addition to information relating to different funding options. The information sought includes information about how judicial mechanisms are presently making use of, or considering making use of, technological and other advances to streamline and simplify judicial processes.

IV. Concluding observations

47. **In recognition of the need for a greater international focus on the issue of access to remedy in cases of business-related human rights impacts, and in response to Human Rights Council resolution 26/22, OHCHR has launched the accountability and remedy project. The project aims to contribute to making domestic legal responses fairer, more accessible and more effective for victims of business-related human rights abuses, particularly in cases of severe abuse. In accordance with its mandate from the Council, OHCHR will present the conclusions and findings arising from the project in a final report for consideration by the Council at its thirty-second session. The present report contains an overview of the scope, aims and progress of the project.**

48. **Much of the information for the accountability and remedy project will be gathered through two overarching processes: a global online consultation, which takes the form of a global online survey, and a detailed comparative process, which is a more focused in-depth research process into 25 focus jurisdictions. The global online consultation will be open until 1 August 2015 and can be accessed through the OHCHR website. OHCHR encourages all States to complete the survey in order to help ensure that the project findings will have the broadest possible research basis and that the eventual findings and outputs are appropriate to a wide range of jurisdictions. OHCHR also encourages all other relevant stakeholders, including lawyers, academic researchers, trade union representatives, civil society organizations, stakeholders, businesses and business organizations and others to complete the survey.**

49. **An online information hub has been established for the accountability and remedy project through a dedicated portal hosted by the Business and Human Rights Resources Centre.[8] This website and the OHCHR website contain essential information about the project that will be updated as progress is made.**

50. **The findings of the preparatory work carried out under project component 2 (see paras. 33-40) will be used to help inform preparations for, and give practical context to, interactive workshop discussions on the cross-border regulatory and**

[8] See http://business-humanrights.org/en/ohchr-launches-%E2%80%9Caccountability-and-remedy-project%E2%80%9D.

enforcement issues and challenges posed by business involvement in gross human rights abuses. These discussions are scheduled to take place in the latter half of 2015, subject to OHCHR obtaining sufficient funds. The aims of these workshops will be:

(a) To clarify the legal and practical problems that can arise in cross-border cases;

(b) To understand the ways in which existing views of roles and responsibilities are likely to shape State responses;

(c) To draw from experience from other regulatory fields in order to consider ways that States can work together cooperatively to address the challenges that arise in cross-border cases;

(d) To test and give participants the opportunity to react to different possible models of international cooperation;

(e) To identify the possible elements of a principled basis for appropriate action in relation to jurisdictional matters.

51. The preparatory work relating to project component 3 (see paras. 41-46) will enable that part of the project to progress effectively and efficiently and in a way that builds on previous academic study. As noted above, insights from the Oxford study have been valuable in helping to shape the relevant parts of the detailed comparative process and the global online consultation.

52. The accountability and remedy project comprises six distinct work streams (see para. 13), each of which has been selected based on issues identified in previous OHCHR research as requiring further clarification in terms of policy and principle, and for its strategic value. Each project is distinct and has its own methodology, but there are important interrelationships between them.

53. Findings from all six work streams, and any recommendations and guidance arising from this work, will be subject to stakeholder consultation between September 2015 and the first quarter of 2016. In addition, initial findings and analysis from these projects will be presented at the Forum on Business and Human Rights to be held in Geneva from 16 to 18 November 2015 to enable multi-stakeholder consultation in an open format.